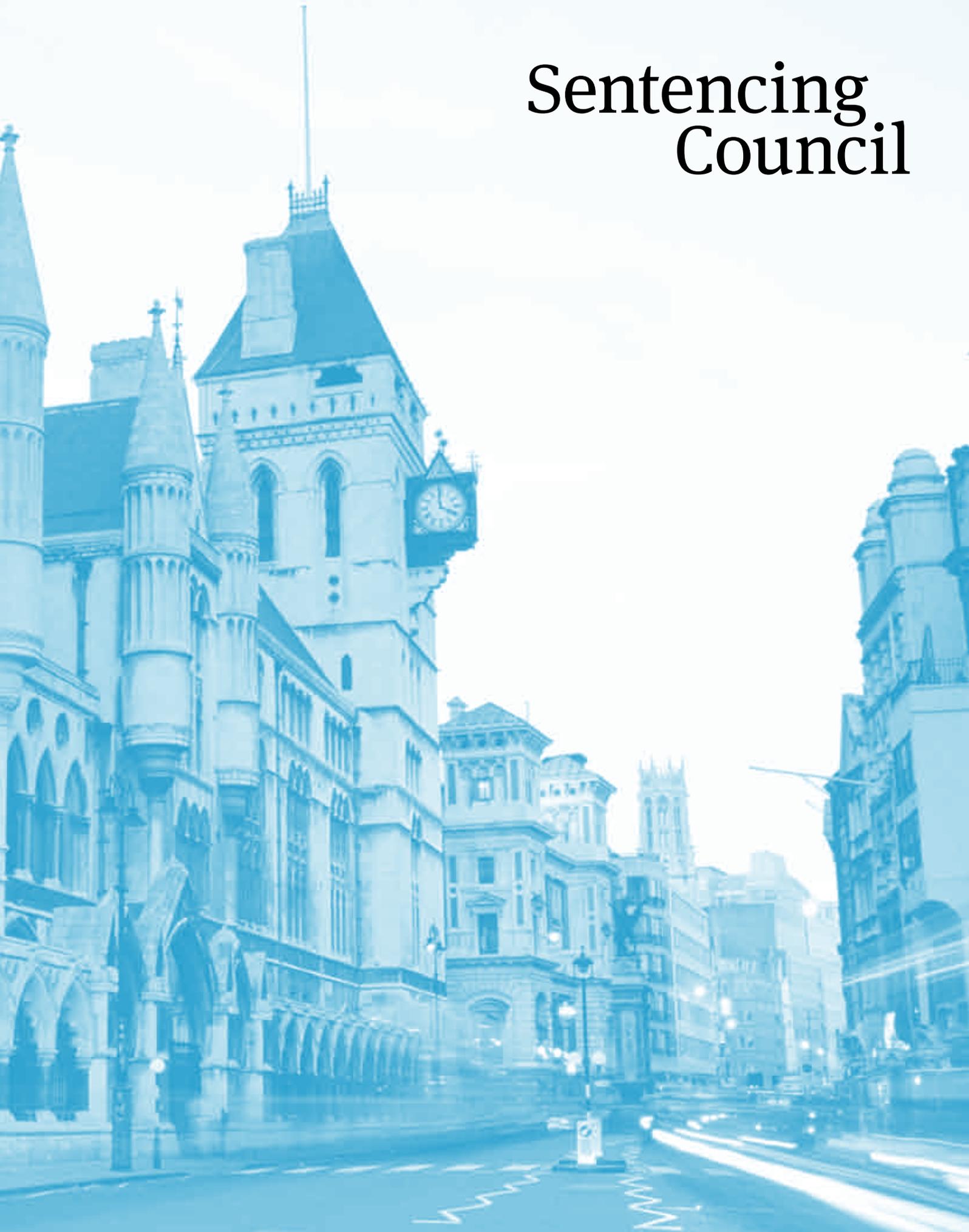


Sentencing Council



Annual Report 2011/12

Sentencing Council

Annual Report 2011/12

The Sentencing Council is an independent, non-departmental public body of the Ministry of Justice and, in April 2010, replaced the Sentencing Guidelines Council and the Sentencing Advisory Panel

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



Two years have now elapsed since the implementation of the Coroners and Justice Act 2009 which brought the Sentencing Council of England and Wales into being and the range and volume of public consultations and guidelines issued by the Sentencing Council demonstrate the extremely good progress the Council has made. We have developed a new approach to guidelines, and then both consulted upon and published definitive guidelines for assault, drugs, burglary, totality of sentences, taking offences into consideration and allocation. We have also embarked on a consultation exercise in relation to dangerous dogs. Each of these guidelines has taken considerable work to gather the relevant information and, during the course of the consultation period, to speak to those interested or involved in the particular subject matter. Only then has it been possible for a definitive guideline to be published. Many of the subject areas are complex, particularly drugs which involved significant work to establish a way of understanding culpability and harm. I believe that courts are becoming much more familiar with the model of harm and culpability that we have used in our guidelines and welcome the consistency it provides whilst allowing them to exercise discretion appropriately.

We have been enormously encouraged by the high level of responses to the four consultations completed this year – drugs, burglary, totality and dangerous dogs. An average of nearly 60 per cent of responses were received via online questionnaires for the three consultations for which this was available, but we recognise that there is still more we can do to reach our audiences, namely the general public, the legal and law enforcement communities and non-governmental organisations. We have been pleased by the success of our public engagement events, the high level of media coverage of our work and visits to our website and we look forward to increasing public awareness of the sentencing process through the new film for victims we have developed which will be distributed via victim and witness services.

This year has also seen the continuation of the Crown Court Sentencing Survey which began in October 2010. Whilst we look forward to more detailed analysis of the data, we thank our judicial colleagues for helping us achieve a response rate averaging over 60 per cent, with some areas achieving as high as 95 per cent. Plans for the magistrates' survey are developing

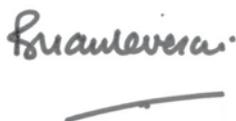
but will involve a different format due to the much higher volume of cases dealt with in magistrates' courts.

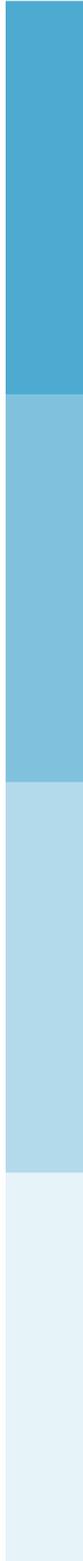
On 13 July 2011, the Prime Minister asked me to chair the public inquiry into the culture, practices and ethics of the press. Since this appointment, I have maintained my position as Chairman of the Sentencing Council but the extent of my involvement has inevitably had to change. By way of example, I have decided that it would be inappropriate to undertake any media work on behalf of the Council whilst I am chairing the Inquiry and I am indebted to my colleagues on the Council for undertaking this work in my absence. They have provided additional assistance in numerous other ways and helped to maintain the momentum of the Council's first year and I would like to take this opportunity to express my gratitude to all of them.

The coming year will be one in which the Council builds on its achievements so far. We are looking forward to our future work which continues to be challenging not only in terms of volume but particularly in terms of the complexity of the forthcoming work on sexual offences and corporate offending. In the meantime, I firmly believe that we have made exceptional progress in establishing the Council and its reputation and I commend this detailed account of its activities.

Lord Justice Leveson

July 2012





Part 1

The Sentencing Council and its work

The role of the Sentencing Council

The Sentencing Council for England and Wales was set up by Part four of the Coroners and Justice Act 2009 to promote greater transparency and consistency in sentencing, whilst maintaining the independence of the judiciary.

The Sentencing Council is an independent, non-departmental public body of the Ministry of Justice and, from 6 April 2010, replaced the Sentencing Guidelines Council and the Sentencing Advisory Panel.

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

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

The Council fulfils the following functions contained in the Coroners and Justice Act 2009:¹

- prepares sentencing guidelines;²
- publishes the resource implications in respect of the guidelines it drafts and issues;³
- monitors the operation and effect of its sentencing guidelines and draws conclusions;⁴
- prepares a resource assessment to accompany new guidelines;⁵
- promotes awareness of sentencing and sentencing practice;⁶ and
- publishes an annual report that includes the effect of sentencing and non-sentencing practices.⁷

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

² s.120 Coroners and Justice Act 2009

³ s.127 ibid

⁴ s.128 ibid

⁵ s.127 ibid

⁶ s.129 ibid

⁷ s.119 ibid

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

Functions

The Sentencing Council has responsibility for:

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

In addition to the functions above, the Council must:

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

Membership of the Council

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

Lord Justice Leveson, a Court of Appeal judge, was appointed Chairman of the Sentencing

Council in November 2009.

There were 13 other appointments, seven judicial and six non-judicial. All judicial appointments were made by the Lord Chancellor and Lord Chief Justice. Non-judicial positions were widely advertised and appointments were made following application and interview. All non-judicial posts were for an initial period of three years with the possibility of extending them beyond that period. Those appointed were as follows:

Judicial:

- District Judge (Magistrates' Courts)
Anne Arnold
- The Honourable Mr Justice Globe
- The Right Honourable Lord Justice Hughes
- His Honour Judge McCreath
- The Honourable Mrs Justice Rafferty DBE
- Katharine Rainsford JP, Magistrate on the West and Central Hertfordshire Bench
- The Honourable Mr Justice Treacy

It should be noted that following Mr Justice Globe's promotion to the High Court and Lady Justice Rafferty's promotion to the Court of Appeal and subsequent departure from the Council, a vacancy opened on the Council for a circuit judge which was filled in April 2012 by His Honour Judge Davis QC, the Honorary Recorder of Birmingham.

Non-judicial:

- John Crawford OBE, former Chief Executive, Greater Manchester Probation Trust
- Siobhain Egan, defence solicitor
- Tim Godwin OBE QPM, former Deputy Commissioner, Metropolitan Police (retired January 2012)
- Gillian Guy, Chief Executive, Citizens Advice
- Professor Julian Roberts, Professor of

Criminology, University of Oxford

- Keir Starmer QC, Director of Public Prosecutions and Head of the Crown Prosecution Service

The Office of the Sentencing Council supports the Council, in particular in:

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

How the Council operates

The Council is outward-facing, responsive and consultative and draws on expertise from relevant fields wherever necessary while ensuring the legal sustainability of all its work. The Council operates in a legally and politically complex environment and aims to bring clarity wherever possible. The Council aims to foster close working relationships with judicial, governmental and non-governmental bodies while retaining its independence. These include the Council of Circuit Judges, The Criminal Procedure Rules Committee, the Judicial Office, the Council of Her Majesty's District Judges (Magistrates' Courts) and the Magistrates' Association. The Council engages with the public on sentencing, offers information and encourages debate.

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

In addition to members, three advisors are invited to advise the Council on matters related to their specialist areas. They are:

- Paul Cavadino, former Chief Executive, Nacro;
- Mandeep Dhami, reader in forensic psychology, University of Surrey; and
- Paul Wiles, former government Chief Social Scientist and Chief Scientific Adviser to the Home Office.

The Council has established sub-groups to enable detailed work on two key areas of activity – analysis and research and confidence and communications – with all key decisions being escalated to the full Council. The sub-groups are internal rather than public-facing and their role is mandated by the Council.

Relationship with Parliament

The Council has a statutory requirement to consult with Parliament⁸ and during the period of this report, Lord Justice Leveson gave evidence to the House of Commons Justice Select Committee on two occasions – 23 June⁹ and 13 December¹⁰ 2011.

In June, the Committee focused on the drugs consultation and specifically on issues such as how to assess harm, purity, street value and motivation as well as discussing the issue of reducing sentences for drug ‘mules’ and how sentences in England and Wales stand up to international comparison. The ongoing burglary consultation was also discussed with a particular focus on whether the theft of items with a high personal or sentimental value should aggravate the offence. Other issues discussed were the Crown Court Sentencing Survey, guilty pleas and how office resources were allocated.

In December, the Chairman was asked, on the basis of the 2010/11 annual report, what had been learnt about sentencing guidelines and their development. The Chairman answered that the Council had decided to ‘start from scratch’ to think about the harm and culpability model now used in all Sentencing Council guidelines. This meant that guidelines could be encapsulated within two or three sides of paper, focusing the sentencer on the key areas for consideration.

The Committee also asked questions around the Council’s response to the public disorder in England in August. The Chairman explained that whilst the Sentencing Council is able to publish guidelines without issuing a consultation, it would not have been desirable to do so. The time taken (however short) to issue a guideline would mean that some offences would be sentenced prior to the new guideline and others afterwards which could lead to inconsistency and complicate subsequent appeals.

Other issues covered our relationship with the Ministry of Justice, the recent consultation on offences taken into consideration, allocation and totality, our relationship with the media, the Crown Court Sentencing Survey, how office resources were allocated and guilty pleas.

In addition to the Justice Select Committee, the work of the Sentencing Council has also been open to further scrutiny in the form of a wide ranging sentencing debate in the House of Commons led by the Lord Chancellor and Secretary of State for Justice.

The Council stands ready to continue its relationship with the Committee and with Parliament more widely.

⁸ s.120(6)(c) Coroners and Justice Act 2009

⁹ <http://www.publications.parliament.uk/pn/cm201012/cmselect/cmjust/1211/11062301.htm>

¹⁰ <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmjust/1711/17111.pdf>

Part 2

Council activity and achievements

Guidelines

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

This annual report covers the period from 1 April 2011 to 31 March 2012. For information on previous Sentencing Council activity, please refer to our 2010/11 annual report which is available on our website: www.sentencingcouncil.org.uk

Producing guidelines is one of the main roles of the Council and the box on the right sets out the process involved in developing a guideline from draft, through consultation stages, to a definitive version used by the judiciary. The Council's first definitive guideline, on assault, came into force on 13 June 2011 and the Council is monitoring the use of this new guideline. This is discussed in more detail on page 19 under the monitoring section. The Council has replicated the step-by-step approach adopted in the assault guideline in its other offence specific guidelines whilst presenting information specific to each offence.

It is important to note that guidelines allow for the discretion of judges. Guidelines are intended to create a consistent approach and within that approach, judicial discretion is preserved. There is always room within the guideline for a judge to sentence the particular offender for the particular offence that is in front of him or her. If in any particular case, the judge feels it is within the interests of justice to sentence outside the guideline, the Coroners and Justice Act specifically allows for this.¹¹

Step 1 – Priorities

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

Step 2 – Research

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

Step 3 – Approach

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

Step 4 – Consultation

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

Step 5 – Responses

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

Step 6 – Publication

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

Step 7 – Monitoring

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

¹¹ s.125(1) Coroners and Justice Act 2009

In 2011/12, the Council has:

- issued a consultation, produced and brought into force a definitive guideline on sentencing burglary offences;
- brought into force its definitive guideline on assault;
- completed its consultation, produced and brought into force a definitive guideline on sentencing drug offences;
- issued a consultation and produced a definitive guideline on the overarching principles of allocation, offences taken into consideration and totality;
- issued a consultation on sentencing for dangerous dog offences; and
- commenced work on drafting guidelines for consultation on both environmental and sexual offences.

i) Burglary Offences

The Council developed its guideline on burglary offences, publishing the draft guideline for consultation on 12 May 2011. The definitive guideline was issued on 13 October 2011 and came into force on 16 January 2012.



Rationale

The Council wanted to produce one definitive guideline dealing with all the burglary offences in one place. The Sentencing Guidelines Council had produced a guideline on burglary but there were gaps in this

guidance: it included only domestic burglary for magistrates' courts and not for the Crown Court and there was no guidance on aggravated burglary. In 2011, 11,434 adult offenders were sentenced in the Crown Court for burglary offences, representing 11.5 per cent of all adults sentenced in the Crown Court.

Approach

The Council followed the approach taken in the *Assault: Definitive guideline* in drafting the burglary guideline. This was intended to aid practitioners to apply the same approach for both these offences.

Although the Council looked at current sentencing practice in developing the guideline, the exercise allowed the Council the opportunity to think about how best to ensure that the impact on the victim and the harm caused could be properly reflected. As a result, the Council included factors increasing harm such as the victim being at home during the burglary or items of significant value being taken whether that be economic value or, just as importantly, sentimental value.

Consultation

The Council issued two consultation documents, one for professionals including the judiciary, legal practitioners and those involved in the criminal justice system and a separate version for members of the public who had an interest in the issue. In addition, an online questionnaire was made available to ensure that the consultation reached a wide audience. A number of consultation events were arranged between June and August for both professionals and the public.

The consultation sought responses to specific questions on the burglary guidelines and asked about structure, content of the guidelines, the impact on and consideration of victims, equality and diversity matters and the actual sentence ranges and starting points. There were 460 responses received of which 111 were sent as letters or e-mails and 349 were responses to the online questionnaire.

The consultation closed just before the events of last August which saw widespread rioting and associated criminal activity in cities across England. This meant that responses received in relation to burglary of non-domestic premises did not reference these events. However what became apparent from both the responses to the consultation and other feedback received was, that whilst non-domestic burglary may on the surface appear less traumatic than if a home is violated, the damage and consequences especially for small businesses and shop owners living above or near premises can be equally devastating. This led the Council to reconsider the ranges we consulted on for non-domestic burglary and the Council increased the top of the range from the four years that was proposed in the consultation to five years. The Council also decided that the words 'context of general public disorder' should be included as a factor indicating greater harm for all of the burglary offences.

Implementation

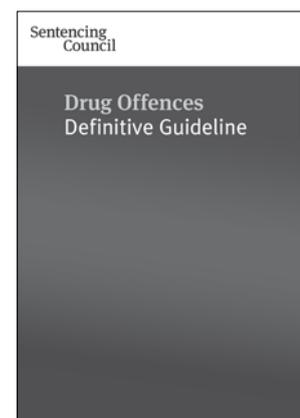
There was a three month implementation period for the guideline, between issue on 13 October 2011 and implementation on 16 January 2012 to allow sentencers time to become familiar with the guideline and for the hard copies of the guideline to reach the 32,000 magistrates and 2,500 Crown Court judges and other court staff.

ii) Assault Offences

Following the consultation and publication of the assault guideline in 2010/11, the assault guideline came into force in all courts in England and Wales on 13 June 2011. See page 20 for further information on monitoring sentences for assault since this date. There is a detailed description of the development of the assault guideline in our 2010/11 annual report.

iii) Drug Offences

The Council developed its guideline on drug offences, issuing the draft guideline for consultation on 28 March 2011.



The consultation closed at the end of June and, given the complexity of the subject and the issues raised in the responses, the Council took until December to carefully consider the arguments and finalise the guideline.

The definitive guideline was issued on 24 January 2012 and came into force on 27 February 2012. This was a much shorter implementation period than normal due to the fact that reduced sentences for drug 'mules' set out in the guideline needed to be implemented as quickly as possible to reduce the possible impact on any outstanding cases and to minimise any perceived unfairness between those falling either side of the implementation date.

Rationale

Offences involving controlled drugs form a large proportion of cases dealt with in the court system – in 2011, 15,250 adult offenders were sentenced in the Crown Court for drug offences, representing 15.3 per cent of all adult sentences in the Crown Court.

There was no Crown Court guideline for these types of offences, although there was some guidance for magistrates when sentencing limited types of drug offences in the *Magistrates' Court Sentencing Guidelines* issued by our predecessor body, the Sentencing Guidelines Council in 2008.

The Sentencing Advisory Panel (SAP) produced advice for the SGC entitled *Sentencing for Drug Offences* in March 2010. The Sentencing Council replaced both these organisations in April 2010 but decided to continue the SAP's work in this area, needing to do so while the advice of the SAP was still current. The Council supported several of the recommendations made in the SAP's valuable advice but proposed alternatives in relation to others.

Approach

In preparing the guideline, the Council's aim was to ensure that all sentences are proportionate to the culpability of the offender and the harm caused by the offence. The guideline seeks to maintain current sentencing practice for the majority of drug offenders whilst increasing consistency in the decision-making process. There was one group of offenders, however, where the Council felt that sentencing levels were sometimes disproportionate to the level of culpability involved. These were the so-called drug 'mules' – those, usually naïve,

individuals who have been exploited by organised criminals to carry drugs. They do not understand the consequences of what they are doing and are treated as 'disposable' by their exploiters. The Council's aim with this specific group of offenders was to ensure a downward shift in sentences to ensure they are proportionate to those received by other drug offenders. This change was met with overwhelming support from those who responded to the consultation. The Council remained committed to ensuring that long sentences continued to be handed down to offenders who play a significant role in the most organised and large-scale operations.

Consultation

The Council launched its consultation on 28 March 2011 for a period of three months. The consultation sought responses to specific questions, including its structure, content, the impact on and the consideration of victims, equality and diversity matters and the sentence ranges and starting points contained within each offence specific guideline. A total of 685 responses to the consultation paper were received. Of these 146 were e-mailed or sent in hard copy and 539 were received as responses to the online questionnaire. Respondents were drawn from a variety of backgrounds including the general public, the judiciary, the magistracy and professional organisations involved in the criminal justice system.

Consultation events with magistrates, judges, legal practitioners, criminal justice organisations and those with an interest in drug offending issues all provided the Sentencing Council with much to consider and also helped to generate a number of consultation responses. The in-house

research team also carried out research with a number of Crown Court judges over several months, including ‘road testing’ the draft guideline, to understand better current sentencing practice.

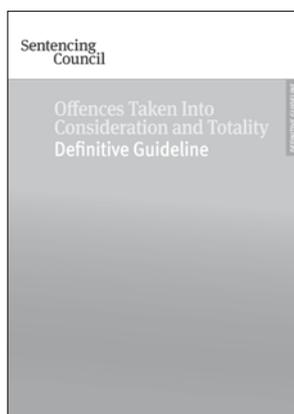
Implementation

As referenced above, in response to concerns raised by sentencers and practitioners during the consultation, the Council decided on a one month, rather than the usual three month, implementation period for the guideline in order to allow for a smoother entry into force. The guideline came into force on 27 February 2012.

The Council published its response to the consultation alongside the definitive guideline and both documents are available on the Council’s website.¹²

iv) Allocation, offences taken into consideration and totality

The Council developed its draft guideline on the overarching principles of allocation, offences taken into consideration and totality, issuing the draft guideline for consultation on 15 September 2011.



The definitive guideline was issued on 6 March 2012 and came into force on 11 June 2012.

Rationale

The Council had a statutory duty to prepare a guideline about ‘the application of any rule of law as to the totality of sentences’.¹³ The principle of totality applies when a court is sentencing for multiple offences.

The Council also had discretion to prepare a guideline about the allocation decision¹⁴ and offences taken into consideration (TICs). The allocation decision relates to offences which can be tried either in the magistrates’ court or the Crown Court as to which court is the most appropriate to deal with the case. The practice of taking offences into consideration is a long-standing convention which allows a court to take into account offences for which an offender has not been convicted but which he has admitted in court, when sentencing. The Sentencing Advisory Panel had prepared advice on *Offences Taken into Consideration*¹⁵ which the Sentencing Council drew upon when preparing its draft guideline.

Approach

The Council sought to set out the general principles in relation to TICs and totality in order to reflect current practice and promote greater consistency and transparency.

In relation to the guideline on allocation, that is, the decision about whether a case is heard in the magistrates’ or Crown Court, the Council’s principal objective was to ensure, in so far as it is possible, that all cases are heard in the most suitable court. The key change which the Council proposed in its

¹² [http://sentencingcouncil.judiciary.gov.uk/docs/Drug_Offences_Definitive_Guideline_final_\(web\).pdf](http://sentencingcouncil.judiciary.gov.uk/docs/Drug_Offences_Definitive_Guideline_final_(web).pdf) and http://sentencingcouncil.judiciary.gov.uk/sentencing/consultations-closed.htm#Drug_offences_guideline

¹³ s.120(3)(b) Coroners and Justice Act 2009

¹⁴ s.122(2) *ibid*

¹⁵ Sentencing Advisory Panel (2010) *Advice to the Sentencing Guidelines Council: Offences Taken Into Consideration*

guideline was to move away from the current practice of accepting the prosecution case at its highest and instead encourage the court to take a more balanced view of the case, including taking into account the defence representations about what happened.

Consultation

The Council issued a consultation document primarily targeted at magistrates, judges and other legal professionals, reflecting the nature of the specific aspects of sentencing covered by the consultation. However, the Council also produced a set of short guides designed to explain the issues to non-professionals and to facilitate public understanding of the issues.

The Council received 83 responses to the consultation and a consultation event in Birmingham with around 30 magistrates, district judges and legal advisers also contributed to the consultation exercise. The responses received were broadly supportive of the approach taken by the Council. It had been expected that the number of responses to this consultation would be lower than other consultations due to the technical nature of the issues discussed.

The Council published its response to the consultation alongside the definitive guideline and both documents are available on the Council's website.¹⁶

Implementation

As with its other guidelines, the Council recognises the need to ensure a consistency of approach across all the courts which will be using the guidelines, whilst being careful

not to include material which would rarely or never be used in one or other jurisdiction. For this reason, the Crown Court version of the guideline does not include the allocation guideline and the version of the totality guideline for inclusion in the *Magistrates' Court Sentencing Guidelines* does not include the specific application sections on extended sentences for public protection or indeterminate sentences, as magistrates cannot pass these sentences.

The Council decided on a three month implementation period for the guideline on these overarching principles in order to allow time to raise awareness amongst sentencers and legal professionals through working with the Judicial College to provide supporting materials. We have also provided material to online legal trainers for circulation to the legal community. The guideline came into force on 11 June 2012.

v) Dangerous Dog Offences

The Council developed its sentencing guideline for dangerous dog offences, going out to consultation with the draft guideline on 15 December 2011.



Rationale

The number of dangerous dog offences sentenced by the courts has been on the increase in recent years and courts currently have no guidelines for sentencing

¹⁶ <http://sentencingcouncil.judiciary.gov.uk/sentencing/consultations-closed.htm>

such offences. The total number of adults sentenced for offences covered by the Council's guideline increased by 39 per cent from 855 in 2009 to 1,192 in 2010.¹⁷ The Magistrates' Association also specifically requested guidance for their members on these offences due to their prevalence.

The Council was particularly keen to provide the courts with extended guidance on the use of compensation and ancillary orders in this guideline since they are particularly important in dangerous dog offences. Available orders include destruction orders and disqualification orders, both of which require the court to make a considered decision in the best interests of the general public.

Approach

The Council's aim in producing a guideline was to increase the consistency of sentencing of dangerous dog offences and to provide the courts with clear guidance on sentencing including the use of compensation and ancillary orders.

The draft guideline sought to maintain current sentencing practice for each of the offences covered. Sentencing levels were the subject of significant debate during the consultation and a large number of respondents argued that current sentencing practice was too lenient for some of the offences covered by the guideline.

Consultation

The Council's consultation on the draft guideline ran from 15 December 2011 to 8 March 2012. It sought views from a wide range of interested parties including

sentencers, legal professionals, animal welfare organisations and members of the public with an interest in this area. A total of 502 responses were received. Of these, 94 were emailed or sent as hard copies and 408 were received as responses to the online questionnaire.

The Council also held three consultation events in London, Manchester and Bristol, with participants including magistrates, district judges, police representatives, animal welfare organisations, the CPS and others.

The Council made a number of changes to the guideline, reflecting the responses and other feedback received. The resulting definitive guideline, ensuring that courts use their full powers, was published on 15 May 2012. The definitive guideline and the Council's response to the consultation are available on the Council's website.¹⁸

For more information on the research conducted as part of the Council's development of the guideline, see page 23.

vi) Work in progress

- **Environmental offences**

The Council has commenced work on a draft guideline on environmental offences with a view to going out to consultation later in the year.

In 2010, just over 5,500 sentences were given for waste-related offences under the Environmental Protection Act 1990 and the Environmental Permitting Regulations 2007. Whilst this is a comparatively small number compared to the volumes of offences our other guidelines have dealt with, it is still sizeable. In particular, illegal dumping

¹⁷ Court Proceedings Database, Ministry of Justice, 2010

¹⁸ Consultation response: <http://sentencingcouncil.judiciary.gov.uk/sentencing/consultations-closed.htm> and definitive guideline: [http://sentencingcouncil.judiciary.gov.uk/docs/Dangerous_Dog_Offences_Definitive_Guideline_\(web\)_final.pdf](http://sentencingcouncil.judiciary.gov.uk/docs/Dangerous_Dog_Offences_Definitive_Guideline_(web)_final.pdf)

of waste, more commonly known as fly-tipping, is a problem which is estimated to have cost local authorities more than £45 million to clear up in 2009/10.

The current *Magistrates' Court Sentencing Guidelines* contains some guidance on sentencing for environmental offences within the *explanatory material* section and in September 2009, the Magistrates' Association published, *Costing the Earth: guidance for sentencers*, a handbook for a wide range of environmental sentencing issues. However, concerns have been submitted to the Council about consistency in sentencing, and difficulties particularly in calculating fines for organisations. In 2010, for the most frequent offences sentenced under the 1990 Act and the 2007 Regulations, 4,642 individuals were sentenced compared to only 134 organisations. This demonstrates the relative infrequency with which cases are sentenced where the offender is an organisation, the lack of familiarity the majority of sentencers have with such cases and offenders and therefore the need for improved sentencing guidance in this area.

The Council's aim is to produce a single consistent approach in one guideline for a range of environmental offences including waste offences. The Council's intention is that the approach taken in the environmental offences guideline should have broader application in future guidelines where the offender is an organisation, such as a guideline on fraud offences on which work will start later in 2012.

- **Sexual offences**

The Council has started work revising and updating the guidelines on the Sexual Offences Act 2003 with a view to going

out to consultation in the autumn. This is the largest piece of work the Council has undertaken to date. Currently over 40 sexual offences are included in the guidelines being reviewed by the Council. The work is further complicated by the variety of offences and the fact that there is often little commonality between different types of sexual offending. The guidelines will tackle offences ranging from rape to indecent images of children, exposure and voyeurism.

The Council was asked to look at this area due to concern from sentencers about both the structure and size of the current guidelines. One of our key tasks will be to ensure the guidelines are clear and transparent about the harm and culpability factors considered by the courts when sentencing these cases. Given the range of offending and the complexity and sensitivity of the issues involved, it is important that these offences are given a full and detailed consideration. The Council has been engaging with interested parties at an early stage to identify relevant issues.

The Council has already commissioned research from NatCen on the attitudes of victims and the public to the sentencing of sexual offences and this research will help to inform the ongoing work.

Current SGC guidelines were written shortly after the 2003 Act came into force and the Council will be looking at areas where we now have a clearer idea of the pattern of offending and will be looking at ways that the current guidelines can be updated in light of this. The approach will focus on looking at the harm to the victim and culpability of the offender. There will be a full public consultation in autumn 2012.

Analysis and research

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

One of the functions of the Sentencing Council is to carry out analysis and research into sentencing. Research carried out in the past year includes ongoing work on the monitoring aspects of the Council's statutory obligations with a particular emphasis on the Crown Court Sentencing Survey, various social research studies and the development of publications such as resource assessments and analysis and research bulletins that inform and support the development of guidelines.

i) Statistical monitoring and analysis

The Council has a legislative duty to monitor the operation and effect of its guidelines, and to draw conclusions about a) the frequency with which, and the extent to which, courts depart from sentencing guidelines; b) the factors which influence the sentences imposed by the courts; c) the effect of guidelines on the promotion of consistency in sentencing; and d) the effect of guidelines on the promotion of public confidence in the criminal justice system. The Council decided that due to this large remit the best initial approach to fulfilling these legislative duties would be to concentrate on cases in

the Crown Court before moving on to the magistrates' courts which deal with a much larger volume of cases – 92 per cent of all criminal cases in 2011. The Council therefore established the Crown Court Sentencing Survey (CCSS) to collect the information required to fulfil these legislative monitoring obligations in the Crown Court.

Crown Court Sentencing Survey

The Crown Court Sentencing Survey began on 1 October 2010. It is the first survey to capture data on the way that Crown Court judges sentence across England and Wales. Since sentencers provide the information for the survey, the findings provide a unique source of insight into sentencing decisions. It provides very important information about the factors affecting sentencing, the ways that guidelines are being applied and areas where guidelines can or need to be developed by providing the Council with information on factors affecting seriousness, guilty plea reductions and sentence outcomes for specific offences. Survey response rates were high, and comparative analyses conducted by the Council's analysis and research team ensured that conclusions drawn from the survey were robust (see the Crown Court Sentencing Survey report for further methodological details on our website). As a result of the Crown Court Sentencing Survey, all parties with an interest in the sentencing process – including legal practitioners, crime victims, policy makers and many others – will now have a more comprehensive portrait of sentencing than ever before.

- **Publications**

The first results from this survey were published as a government statistics bulletin in October 2011 and included analysis of the first six months' data. The bulletin is accessible through the Council's website and the UK Statistics Authority website. The bulletin provided a national overview of how key factors taken into account when sentencing, influence the final sentence outcome. The bulletin was produced with a public audience in mind and thus aimed to contribute to the fulfilment of the Council's obligation to promote public confidence in sentencing. The second set of results from the survey was published on our website on 24 May 2012 and covered the year from January to December 2011.

- **Using the data**

To date, the survey data has contributed to the development of the drugs guideline by showing which factors sentencers take into account when sentencing drug offences. The survey is being used in a similar way to inform the development of the draft sexual offences guideline. In April 2012, the Council appointed a new contractor to process the survey data and we look forward to reporting on improvements to the collection and analysis of the data in next year's report.

- **Further work**

Now that significant amounts of data are available, more detailed analyses of the survey data will be conducted over the coming year. For example, the new assault guideline came into force on 13 June 2011, at which time an updated sentencing survey form was also issued to reflect the new sentencing guideline

structure. Once a full year of data has been received on sentences passed under the new guideline, the Council will explore the impact of the new guideline on sentencing practices for assault at the Crown Court.

The Council already produces an analysis and research bulletin (see the Bulletins section on page 22) showing trends in sentencing of a particular offence when a consultation guideline for that offence is published. This will continue and, in future, will be supplemented with information from the Crown Court Sentencing Survey. In addition, the Council is planning to publish separate bulletins looking at specific offences and topics which will draw extensively on results from the Crown Court Sentencing Survey.

- **Monitoring in magistrates' courts**

The legislative requirements of the Council also extend to magistrates' courts. Work is currently underway to develop a survey similar to the one running in the Crown Court to capture the factors that influence sentencing at magistrates' courts. Following consultation with all interested parties, the Council will be conducting a pilot of the magistrates' courts survey. It is envisaged that data collection from magistrates' courts on the factors taken into account when sentencing will start as soon as possible after the pilot.

- **Monitoring departures from guidelines**

The Council has decided that it is only appropriate for it to monitor departures from guidelines issued by the Sentencing Council, rather than guidelines issued before it was set up by the Sentencing Guidelines Council or flowing from decisions of the Court of Appeal (Criminal

Division). The only definitive Sentencing Council guideline that came into force during 2011/12 that we have been able to monitor was for assault offences.

The analysis below presents Crown Court Sentencing Survey data on sentences for assault in 2011 which were imposed after the implementation of the assault guideline (13 June 2011). For the present, analysis focuses on the percentage of cases falling within the guideline offence ranges. The offence ranges within the guidelines are intended to deal with the large majority of cases for a particular offence. The Council recognises that there will be exceptional cases, the facts of which will justify imposition of a sentence outside the offence range and this is reflected in the language of the statute. As more Sentencing Council guidelines are introduced, the analysis of departures from guidelines will be expanded to include these offences.

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

“(1) Every court – must, in sentencing an offender, follow any sentencing guidelines which are relevant to the offender’s case.”

The Act further specifies that this means imposing a sentence within the offence range prescribed by any relevant guideline, unless the court is satisfied that it would be contrary to the interests of justice to do so. Accordingly, the Council analysed the volume of sentences falling within the total offence ranges for the offences covered by the assault guidelines. The analysis includes all sentences imposed on or after 13 June 2011 and captured by the survey.

The analysis excludes sentences where the offender was a youth (under 18 years of age), the sentence imposed was an Imprisonment for Public Protection (IPP) or life sentence, or a hospital order as these sentence outcomes represent only one per cent of all assault sentence outcomes in the period in question. Furthermore, due to the volatility of small volumes of data, the results for assault on a police constable in execution of his duty and assault with intent to resist arrest are not provided. Finally, the data reflect sentences before any reductions for a guilty plea.

- **Assault occasioning actual bodily harm:** 96 per cent of sentences imposed fell within the guideline offence range; one per cent were above and two per cent below the range.¹⁹
- **Causing grievous bodily harm with intent to do grievous bodily harm/ Wounding with intent to do grievous bodily harm:** 92 per cent were within the range, seven per cent above and one per cent below the range.
- **Inflicting grievous bodily harm/ Unlawful wounding:** 97 per cent within the range and three per cent above.
- **Common Assault:** 99 per cent within the range and one per cent above.²⁰

¹⁹ The quoted figures do not add up to 100 per cent due to rounding

²⁰ Where the offence of common assault is racially or religiously aggravated the maximum sentence is two years' imprisonment

Analysis and research bulletins (statistics)

As part of the package of consultation documents the Council publishes on its website, an analysis and research statistical bulletin is produced for both professional and public audiences. Each bulletin presents data relevant to the development of a new guideline. The Council uses these during the development stages of draft guidelines to understand the parameters of current sentencing practice.

The bulletins provide information about current sentencing practice in relation to the offences covered by the consultation draft guideline. The statistical bulletins ensure that those responding to consultations are better able to understand the implications of the guideline proposals. This year, the Council has published statistical bulletins on burglary and dangerous dog offences. (A bulletin was not produced on totality as the data needed to do this is not available.) These bulletins were drafted and developed with advice from the Council's analysis and research sub-group. Colleagues within the Ministry of Justice were consulted to provide quality assurance. The Council intends to continue producing these bulletins as part of the package of consultation documents for any offence specific guidelines. In the future, the data in these bulletins will be enhanced with data provided by the Crown Court Sentencing Survey so that an even more accurate and detailed portrayal of current sentencing practice is available.

ii) Social research

The Sentencing Council has undertaken a number of social research projects in the past year, designed to inform the development of sentencing guidelines. This work has involved collecting views from a number of different audiences: the general public, victims and witnesses, offenders and practitioners including Crown Court judges, district judges, magistrates and legal advisors. The Sentencing Council's social researchers adopt a variety of methodologies, including surveys, questionnaires, face-to-face interviews and focus groups.

A number of pieces of social research were undertaken or completed during the period April 2011 to March 2012:

- *Attitudes to guilty plea sentence reductions*
Research was undertaken by Ipsos MORI into attitudes to guilty plea sentence reductions and published in May 2011.²¹
- *Research with judges on Suspended Sentence Orders (SSOs)*
Research was conducted in May 2011 to inform economic analysis undertaken in response to a request from the Lord Chancellor under section 132 of the Coroners and Justice Act 2009. This asked that the Sentencing Council consider the resource effects of proposed changes to SSOs contained in the Legal Aid, Sentencing and Punishment of Offenders Bill. The research helped understand how Crown Court judges currently use SSOs and how they might react to the proposed changes. It informed the methodology and assumptions for the economic scenario testing and provided an understanding of the likely impact of any changes.²²

²¹ [http://www.sentencingcouncil.judiciary.gov.uk/docs/Attitudes_to_Guilty_Plea_Sentence_Reductions_\(web\).pdf](http://www.sentencingcouncil.judiciary.gov.uk/docs/Attitudes_to_Guilty_Plea_Sentence_Reductions_(web).pdf)

²² http://www.sentencingcouncil.judiciary.gov.uk/docs/Section_132_report_for_web.pdf

- *Research into sentencing dangerous dog offences*

A questionnaire was sent to 100 magistrates and 10 district judges in July and August 2011. The main aims of this research were to explore views on the usefulness of providing guidance in this area and the number and types of sentences passed (and destruction orders used) for dangerous dog offences (both in practice in the past year and in relation to some hypothetical offence scenarios presented to respondents). The questionnaire also asked about the reasons for the sentences given and key aggravating and mitigating factors taken or likely to be taken into account. An analysis and research bulletin covering the key findings of the research was published in December 2011.²³

In addition, a quantitative survey was undertaken in the same period with approximately 1,400 members of the public to explore views on sentences for different offence scenarios. The survey was undertaken by YouGov on behalf of the Sentencing Council. The findings from this research contributed to the development of the draft guideline by highlighting some of the views of sentencers and members of the public in this area and the reasons for these views.

- *Attitudes to sentencing sexual offences*

This externally commissioned piece of work undertaken by NatCen Social Research, involved an initial evidence review to inform the methodology for primary research with the public and victims/survivors. The research explored information on: awareness of sanctions for

sexual offences; respondents' views of the appropriate sanctions and sentences for sexual offences (including their reasons and the relative gravity of sexual offences against each other and in comparison to other offences); aggravating and mitigating factors influencing responses; the experiences of people affected by sexual offences and the seriousness and harm of the offence; and where relevant, their experience of the sentencing process and the impact of the sentence.

The information from this research has been fed into the development of the sexual offences guideline and a report of the research was published in March 2012.²⁴

- *Research on allocation and decision making*

Qualitative interviews with 23 magistrates, district judges and legal advisors were undertaken between October and November 2011 during the consultation period for the draft allocation guideline. The main aims of the internal research were to explore the key factors influencing allocation decisions/advice under current practice, types of offences typically committed for trial at the Crown Court, current practice around committing cases for sentence at the Crown Court, the potential impact of the draft guideline and general views on the draft guideline. The information generated through this work has informed the Sentencing Council's development of the final guideline by indicating both current practice and likely practice under the proposed guideline. The research was published alongside the allocation guideline in March 2012.²⁵

²³ http://www.sentencingcouncil.judiciary.gov.uk/docs/Dangerous_Dogs_Research_Bulletin.pdf

²⁴ [http://www.sentencingcouncil.judiciary.gov.uk/docs/Attitudes_to_Sentencing_Sexual_Offences_\(web\).pdf](http://www.sentencingcouncil.judiciary.gov.uk/docs/Attitudes_to_Sentencing_Sexual_Offences_(web).pdf)

²⁵ http://www.sentencingcouncil.judiciary.gov.uk/docs/Analysis_and_Research_report_allocation_web.pdf

Additional work in progress

- *Judicial input into the sexual offences guideline*

Work has recently started with Crown Court judges to explore their views on early proposals being developed for a revised sexual offences guideline. The findings from this exercise will feed into the proposals that are issued for consultation later in the year and then into the final definitive guideline.

Outcomes

The findings from the Sentencing Council's social research are critical in helping to develop sentencing guidelines – for example, on dangerous dogs, the information helped to identify what type of aggravating and mitigating factors magistrates take into account when sentencing these types of cases. For sexual offences, the research has helped inform how the public and victims distinguish between different types of sexual offences, the harm they perceive is involved, and the type of factors they feel should aggravate or mitigate the sentence imposed. Our social research also provides important information to help identify the potential behavioural consequences of Sentencing Council guidelines. For example, the work on judicial input into the sexual offences guideline will help to identify any aspects that could lead to use of the guideline by judges in a way unintended in its original format. These issues will be fed into the final stages of development of the guideline to ensure that any necessary changes or clarifications are made to the final definitive guideline.

iii) Resource assessments

When formulating guidelines, the Council has a statutory duty to produce a resource assessment to accompany each sentencing guideline which considers the effects of the guideline on the resources required for the prison, probation and youth justice services.²⁶ When exercising its function to prepare guidelines the Council also has a statutory duty to have regard to the cost of different sentences and their relative effectiveness in preventing re-offending.²⁷ These statutory requirements enable the Council to understand better the consequences of their guidelines in terms of impact on correctional resources, and the possible impact of their recommended sentencing options on re-offending.

During its second year, the Council has prepared resource assessments for its guidelines on burglary, drugs, dangerous dogs, totality, offences taken into consideration, and allocation. Where guidelines were expected to cause changes to the average severity of sentencing, the Council has made use of the resource model it developed during its first year. A number of improvements have been made to this model, including use of Crown Court Sentencing Survey data to improve our understanding of levels of guilty plea discounts in the Crown Court, and a more sophisticated approach to modelling the varying severity of offending.

²⁶ s.127(3) Coroners and Justice Act 2009

²⁷ s.129(2)(b) *ibid*

Confidence and communications

Our communications work aims to ensure that the public, the legal community, the law enforcement community, victims, NGOs and the media have:

- a clearer understanding of how sentencing works, access to information they find relevant and opportunities to feedback their views;
- access to analysis and research produced by the Council; and
- greater confidence that sentencing is fair and consistent.

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

Achievements

Broadly, communications work, within the limitations of resources, has gone well. Particular highlights are:

- four full-scale media launches undertaken in the year – the launch of the burglary consultation, the definitive burglary guideline, the drugs definitive guideline and the dangerous dogs consultation (the totality launches were of a lower profile due to their technical nature);
- design, print and distribution of guidelines making documents professional in appearance, accessible and available;
- six sets of documents produced and distributed in hard copy and online for each consultation launch and definitive guideline launch between 1 April 2011 and 31 March 2012;
- increasing the numbers responding to consultations by producing public and professional versions where appropriate as well as online questionnaires. Over the course of seven consultations between February 2009 and March 2010, an average of 53 responses was received by our predecessor organisation in comparison to an average of 432 responses to the four Sentencing Council consultations issued in this period;
- our re-launched website surpassed 100,000 visitors in one month for the first time in June 2011. The launch of the drugs guideline in February 2012 saw 14,500 visitors in a single day;
- numerous speaking engagements undertaken, particularly by our Chairman but also by Council members and office staff speaking at Magistrates' and other events;
- numerous consultation events on specific guidelines, academic seminars and a public engagement event in Liverpool;
- work with victims through Voice UK and production of a short film for victims in partnership with Victim Support;
- extensive media coverage around the launch of consultations and definitive guidelines including nearly 50 news items with over 80 per cent positive or neutral coverage of the definitive guideline on drugs;
- positive relationships at all levels with key partners, for example government, judicial bodies and third sector parties; and
- greater awareness of the research and analysis work of the Council through material being made available online and to the media.

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

Broadening the reach of consultations on sentencing guidelines

Since launching our first consultation on assault in October 2010, the Sentencing Council has sought views from as wide an audience as possible, including members of the judiciary, legal practitioners and individuals and organisations involved in the criminal justice system. Alongside professional consultation documents, both burglary and drugs consultations were produced in versions specifically for members of the public with an interest in the criminal justice system and sentencing, including victims and their families. It was felt that these specific guidelines particularly suited a public version and we will continue to use this approach where appropriate. Additionally, the Council developed quick and easy online questionnaires for burglary, drugs and dangerous dogs for those wishing to access the Council's proposals on the web only. Ten consultation events on proposed guidelines were held throughout the year with a range of representative groups and interested parties.

Response rates for our consultations have continued to be high, partly as a result of our proactive media approach. As mentioned above, we have received an average of 432 responses to our four consultations this year, with 75 per cent of responses coming via our online questionnaires.

Proactive media approach

The Sentencing Council has chosen to adopt a more proactive approach to communications than its predecessor bodies, aiming to promote its work in order to engage the public in its proposals, raise knowledge of sentencing and increase confidence in sentencing guidelines. The Council has made real progress in putting sentencing on the map as far as the media and the public are concerned. In the last four months of the period 1 April 2011 to 31 March 2012, there were 141 articles covering the work of the Sentencing Council and 50 interviews, articles and press notices were completed. Of the 141 media articles covering our work in this period, 43 per cent and 45 per cent respectively were either positive or neutral in tone with only 12 per cent being negative. Consultations on draft guidelines have been publicised widely, not only to the legal sector press but to national print and broadcast media and regional press. We have carried out 54 radio interviews and eight television interviews relating to the four full-scale media launches on both local and national channels including the Today programme, BBC Radio 5 Live, BBC Breakfast TV and Sky News.

It is worth noting that Lord Justice Leveson and other Council members have broken new ground in working with the media and have found a way to engage with them and discuss the principles of sentencing whilst making it clear that, as with all judges, they will not discuss the details of any individual cases. Since his appointment to chair the inquiry into the culture, practices and ethics of the press, Lord Justice Leveson has felt it necessary to decline media interviews on Sentencing Council business; other members of the Council have undertaken these responsibilities and no fewer than five of

them have given interviews or appeared on television or radio.

There has also been a significant amount of proactive communication to build relationships with key figures in the media, ensuring they are aware of the Council's role and how guidelines work. Regional newspapers and broadcasters continue to be contacted via both the Government News Service (GNS) and the media database Gorkana, to ensure they know about the remit and work of the Council and that they can contact us for information about sentencing. The Council accepted an invitation from BBC Radio 5 Live to contribute to a programme about sentencing for offences committed during the public disorder in August 2011. Mr Justice Globe was interviewed for the programme which was broadcast on 27 and 28 December 2011.

Events

As well as Council members and office staff attending external events and speaking engagements including the Justices' Clerks' Society Annual Conference, the London Criminal Courts Solicitors' Association, the Resident Judges' conference, a Criminal Justice Alliance event and seven Magistrates' Association bench AGMs, there have also been numerous consultation events. These included five consultation events in June on the draft drugs guideline, a public engagement event in Liverpool on burglary, a consultation event in November on allocation and three events in February and March on the dangerous dogs consultation.

Website

Over this period, the Sentencing Council's website has continued to be updated following a significant restructure in September 2010. The Council continues to promote the web address throughout its work and visitor rates have increased accordingly.

At the time of the site's relaunch in October 2010 the website had 29,254 monthly visitors. By March 2011 the number of monthly visitors was 42,385 and the 100,000 visitor mark was surpassed in June 2011. In March 2012, the total number of visitors to this site was 158,725. The most popular area of the site continues to be our sentencing guidelines section. The drugs guideline was downloaded 25,470 times from the date of its launch on 12 January 2012 to the end of this reporting year (31 March). The *Magistrates' Court Sentencing Guidelines* was downloaded over 100,000 times in this reporting year.

Partnership working

Improving the Council's relationship with other organisations has been a key part of its communication strategy. Regular meetings with organisations such as the Criminal Justice Alliance, Hibiscus, the Howard League, Justices' Clerks' Society, Magistrates' Association, National Bench Chairmen's Forum, the Prison Reform Trust and Victim Support have brought about useful information sharing and added expertise in our work.

We have also worked directly with Voice UK in developing training materials for their staff to explain sentencing to vulnerable victims, specifically those with learning difficulties.

Summary of achievements – timeline

2011

April	May	June	July	August	September
	<p>12th Burglary consultation opens</p>	<p>100,000 monthly visitors to the website surpassed</p> <p>13th Assault definitive guideline comes into force</p> <p>16th Academic seminar, Institute of Criminology, University of Cambridge</p>	<p>28th Public consultation event in Liverpool on burglary</p>		<p>15th Allocation, TICs and totality consultation opens</p> <p>16th Response to August riots released</p>

2012

October	November	December	January	February	March
<p>13th Burglary definitive guideline published</p> <p>18th First annual report published</p> <p>18th First CCSS findings published</p> <p>18th Report on suspended sentences (s.132) published</p>	<p>4th Voice UK materials completed</p>	<p>8th Dangerous dogs consultation launched</p>	<p>16th Burglary definitive guideline comes into force</p> <p>24th Drugs definitive guideline launched</p>	<p>24th and 29th Dangerous dogs consultation events</p> <p>27th Drugs definitive guideline comes into force</p>	<p>2nd Dangerous dogs consultation event</p> <p>6th Allocation, TICs and totality definitive guideline published</p> <p>13th Public attitudes to sentencing sexual offences published</p>

Part 3

Budget and support activity

Financial report

The cost of the Sentencing Council

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

	2011-12 / £000s
Office staff cost ²⁸	963
Council members' and advisor fees ²⁹	68
Analysis and research	180
Design and printing services	107
Confidence and communications	94
IT Services	7
Training	11
Other office expenditure ³⁰	37
Total expenditure	1,466

²⁸ Includes office staff travel and subsistence costs

²⁹ Includes travel and subsistence costs incurred by Council members and advisors

³⁰ Other office expenditure includes off-site storage cost and postage

Governance

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

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

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

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

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

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

The Council is accountable to the Permanent Secretary at the Ministry of Justice as Accounting Officer and to Ministers for the efficient and proper use of public funds delegated to the Council, in accordance with MoJ systems and with the principles of Governance and Finance set out in *Managing Public Money*³¹ and other relevant Treasury Instructions and Guidance.

The budget is delegated to the Head of the Office of the Sentencing Council (OSC) from the MoJ Director of Criminal Policy. The Head of the OSC is responsible for the management and proper use of the budget.

The Director General Justice Policy Group at the MoJ is accountable for ensuring that there are effective arrangements for oversight of the Council in its statutory functions and as one of MoJ's Arms Length Bodies (ALBs).³²

During this period there were 16 members of staff working at the Office of the Sentencing Council. These are: the head of office and her PA, head of legal, head of communications plus a press officer and communications officer, head of policy plus three policy officers and the head of analysis and research plus six officers with specialisms in social research, economics and analysis. During this period we reduced our headcount by not replacing one of the legal team when they left their post.

³¹ http://www.hm-treasury.gov.uk/psr_mpm_index.htm

³² 'Arms Length Bodies' is an umbrella term for Executive Agencies and Non-Departmental Public Bodies



Annexes

Annex A:

Register of members' interests

Listing direct or indirect pecuniary interests which members of the public might reasonably think could influence Council members' judgement.

Anne Arnold	– no personal or business interests to declare
John Crawforth	– no personal or business interests to declare
William Davis	– no personal or business interests to declare
Siobhain Egan	– no personal or business interests to declare
Sir Henry Globe	– no personal or business interests to declare
Tim Godwin	– Senior executive, global defence and safety team, Accenture
Gillian Guy	– no personal or business interests to declare
Sir Anthony Hughes	– no personal or business interests to declare
Sir Brian Leveson	– no personal or business interests to declare
Alistair McCreath	– no personal or business interests to declare
Katharine Rainsford	– no personal or business interests to declare
Julian Roberts	– no personal or business interests to declare
Keir Starmer	– no personal or business interests to declare
Sir Colman Treacy	– no personal or business interests to declare

Advisors to the Council

Paul Cavadino	– no personal or business interests to declare
Mandeep Dhani	– Reader Forensic Psychology, University of Surrey – London South Bank University, Visiting Instructor – University of Nottingham, Visiting Instructor – Chair and independent member of the Ethical Standards Committee of Cambridge Police Authority
Paul Wiles	– Trustee of NatCen* – Visiting Professor of Criminology, University of Oxford – Honorary Professor of Criminology, University of Sheffield – Board member of Food Standards Agency

* NOTE: due to his position as a trustee of Natcen, Paul Wiles has not been involved in any of the procurement exercises in which NatCen were bidders.

Annex B:

Sentencing factors report

Introduction

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

It is organised as follows: first, the report defines what is meant by a 'change in the sentencing practice of the courts', which establishes the scope of the report; second, the report outlines the changes in sentencing practice that are expected as a result of sentencing guidelines which have been published by the Council in the past year. This summarises the resource assessments the Council has published to accompany its guidelines; and finally, the report presents an analysis of sentencing data for a selection of offences for which there have been the most significant changes in sentencing practice between 2010 and 2011 (the latest available data).

This report does not consider in detail the effects of the Sentencing Council's first definitive guideline on sentencing for assault which came into effect on 13 June 2011. At this stage, only around six months of data exists that could be used to evaluate the effect of the guideline. This is insufficient information from which to draw robust conclusions about how the guideline may have changed sentencing practice since any changes that are currently being observed may be due to volatility in the time series rather than persistent, long term changes. The Council plans to conduct an evaluation of the effect of this guideline once data is available for the one year period

following the introduction of the guideline (that is from June 2011 to June 2012).

The Council's second guideline was the definitive guideline on burglary, which came into effect in January 2012. At the time of writing, sentencing data is available up to the end of 2011, so any changes in sentencing practice due to the burglary guideline or subsequent guidelines will not be reflected in the data in this report.

Scope

A change in the sentencing practice of courts arises when, through time, there are changes to the way in which courts sentence similar cases – that is, when there is a change in the courts' approach to sentencing.

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

There are many other factors which can cause changes in the sentences passed by courts. As such, a change in the average severity of sentences passed does not necessarily imply there has been a change in sentencing practice. For example, changes in the characteristics of offenders coming before the courts will result in different sentencing decisions, even though the approach to sentencing may remain the same. Sentencing guidelines are a key driver of change in sentencing practice. Some

guidelines aim to increase the consistency of approach to sentencing whilst maintaining the average severity of sentencing, whilst other guidelines explicitly aim to cause changes to the severity of sentencing. An example of the latter is the Council's definitive drugs guideline, which aimed to cause reductions in sentencing for so-called drug 'mules'. The section below entitled 'Sentencing guidelines' describes the changes in sentencing practice that are expected to occur as a result of the sentencing guidelines that the Council has published in the last year.

Changes in sentencing practice can also occur where there is an 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.

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

For example, the average custodial sentence length for a given offence is determined not only by sentencing practice, but also by the average severity of offences coming before the courts, amongst other variables. This creates difficulties in interpretation: supposing

from one year to the next it is observed that average custodial sentence lengths have increased, in the absence of other evidence, it is not clear whether this is due to more severe offences coming before the courts, or due to more severe sentencing practice.

The Council believes that, given currently available data, it is not possible to disentangle these factors, and to separate out an estimate of the effects of sentencing practice on its own. Due to these difficulties, the section entitled 'Evidence of changes in sentencing practice in sentencing data' (page 39) in this report presents data on changes in variables such as average custodial sentence length, but is agnostic as to their causes. The Council hopes in future years that data from the Crown Court Sentencing Survey will help contribute towards a better understanding of changes in the sentencing practice of courts by providing information on the factors which are influencing sentencing decisions.

Sentencing guidelines

During its second year (to March 2012), the Council published definitive guidelines on the following offences:

- burglary (published 13 October 2011);
- drugs (published 12 January 2012); and
- totality, TICs and allocation (published 6 March 2012).

This section presents the changes in sentencing practice which are expected as a result of these guidelines.

The guidelines on burglary and totality, TICs and allocation are expected to further the Council's aim of improving the consistency of sentencing, but are not expected to cause shifts in the aggregate severity of sentencing.

The resultant changes in the consistency of sentencing are very difficult to observe since they are unlikely to cause major shifts in the aggregate severity of offending; rather, there is likely to be upward adjustment to some sentences and a downward adjustment to others, with these effects tending to cancel one another out in terms of the *average* severity of sentencing. This issue is considered in more detail in a separate research paper by the Council, which can be accessed on our website.³³

Drugs offences definitive guideline

The drugs guideline is also expected to lead to greater consistency of sentencing. In addition, the guideline is expected to change the aggregate severity of offending for two offences: importation of drugs and the lower end of production/cultivation of class B drugs. The changes which are anticipated are outlined in the following section.

Importation

The new guideline is expected to cause a reduction in the severity of sentencing for drug ‘mules’ that would fall into the ‘lesser role’ category of the guideline. Overall, around 590 adults are sentenced each year for importing drugs of whom around 60 to 180 are thought to be drug ‘mules’.

Almost all sentences for importation are custodial, and no change is expected in the use of the various types of disposal for cases of importation.

It is expected that the decrease in custodial sentence lengths amongst drug ‘mules’ would result in a requirement for between 30 and 150 fewer prison places per annum.

This change is expected to result in an annual cost saving to the prison service of between £1m and £5m per annum and a small (less than £0.1m) saving to the probation service per annum, due to changes in the length of time offenders spend on licence.

Production/cultivation class B

Overall, around 4,160 adults were sentenced for the production/cultivation of class B drugs in 2010. The new guideline may cause an upward shift in the severity of sentencing for offenders being sentenced for class B production/cultivation offences. However, there is significant uncertainty over the size of the potential resource effects.

It is expected that, as a result of the new guideline, there would be between nought and 100 fewer fines per annum. Instead, these would be community orders.

Some sentences that would have been community orders or Suspended Sentence Orders³⁴ in the absence of a new guideline are expected to become immediate custodial sentences. This is expected to affect between nought and 360 sentences per annum.

These changes are expected to result in an increased requirement for prison places. It is estimated that nought to 170 additional places would be required per year.

It is expected that the changes outlined above would result in an increase in costs to the prison service of between nought and £5m per annum, and a decrease in costs to the probation service of between nought and £1m per annum.

³³ http://sentencingcouncil.judiciary.gov.uk/docs/Consistency_in_sentencing.pdf

³⁴ It should be noted that this assessment does not take into account the changes to SSOs which will be implemented as a result of the LASPO bill

For further details of the expected resource effects of the three guidelines published during the Council's second year, please see the individual resource assessments, which can be accessed on our website.³⁵

Evidence of changes in sentencing practice in sentencing data

The previous section considered changes in sentencing practice that may result from Sentencing Council guidelines. This section considers wider changes in sentencing practice which may be occurring.

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

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

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

The following presents a brief discussion of

some of the variables which will be used in this report, and the caveats that surround them.

Average custodial sentence length (ACSL)

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

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

The custody rate

The custody rate is the proportion of all sentences which are of immediate custody. More severe sentencing practice would

³⁵ [http://sentencingcouncil.judiciary.gov.uk/docs/Drugs_final_resource_assessment_\(web\).pdf](http://sentencingcouncil.judiciary.gov.uk/docs/Drugs_final_resource_assessment_(web).pdf)
http://sentencingcouncil.judiciary.gov.uk/docs/Final_resource_assessment.pdf
http://sentencingcouncil.judiciary.gov.uk/docs/Final_resource_assessment_burglary_web.pdf

usually be expected to result in an increased custody rate. Care should be taken with this measure because:

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

Sentencing volumes

There is no direct link between changes in sentencing volumes and sentencing practice. However, changes in sentencing volumes may suggest that changes are occurring in the types of cases coming before the courts. For example, there have been decreasing numbers of thefts of automobiles in recent years. This is due in part to the increased effectiveness of security devices and may mean that, where thefts still occur, they tend to be of higher sophistication and severity.³⁶

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

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

Selected offences for which there have been significant changes in sentencing practice 2010 to 2011

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

These were selected by considering the sentencing volumes for the offence, and the scale of changes in the severity of sentencing between 2010 and 2011. The offences chosen were ones where the combination of sentencing volumes and changes in the severity of sentencing implied they may be having a large effect on correctional resources.

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

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

- conspiracy to defraud (common law);
- dishonestly making a false representation (Fraud Act 2006);
- burglary other than in a dwelling (Theft Act 1968); and
- attempted rape of a female aged 16 years or over (Sexual Offences Act 2003).

One offence was chosen where ACSLs are decreasing:

- kidnapping (common law).

³⁶ Whilst it is true that improved security devices have meant thefts of motor vehicles have declined in recent years, the remainder of this example is speculative

Increases in the average severity of sentencing: conspiracy to defraud

Sentencing trends

Chart 1 shows the volume of sentencing for the offence of conspiracy to defraud from 2001 to 2011. The series is volatile, so it is difficult to determine whether there is any upwards or downwards trend in sentencing volumes.

Average custodial sentence lengths for determinate sentences are shown in Chart 2 on page 42. ACSLs in the years from 2008 to 2011 were substantially higher than in the period 2001 to 2007. In 2011, they were at their highest level over the whole period at two years eight months.

Chart 3 on page 42 shows the custody rate for this offence has fluctuated between around 60 per cent and 75 per cent over the past decade. There was a marked increase in the custody rate between 2010 and 2011, from 64 per cent to 74 per cent. This increase, accompanied by the increase in ACSLs indicates an increase in the average severity of sentencing during this period.

Chart 1

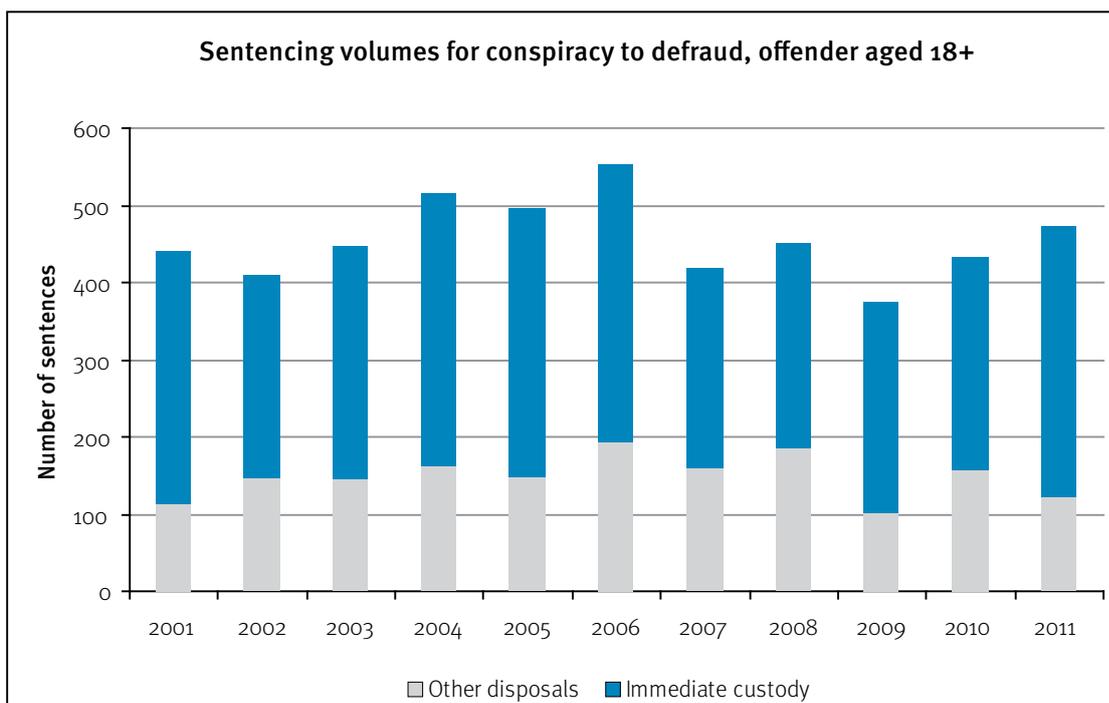


Chart 2

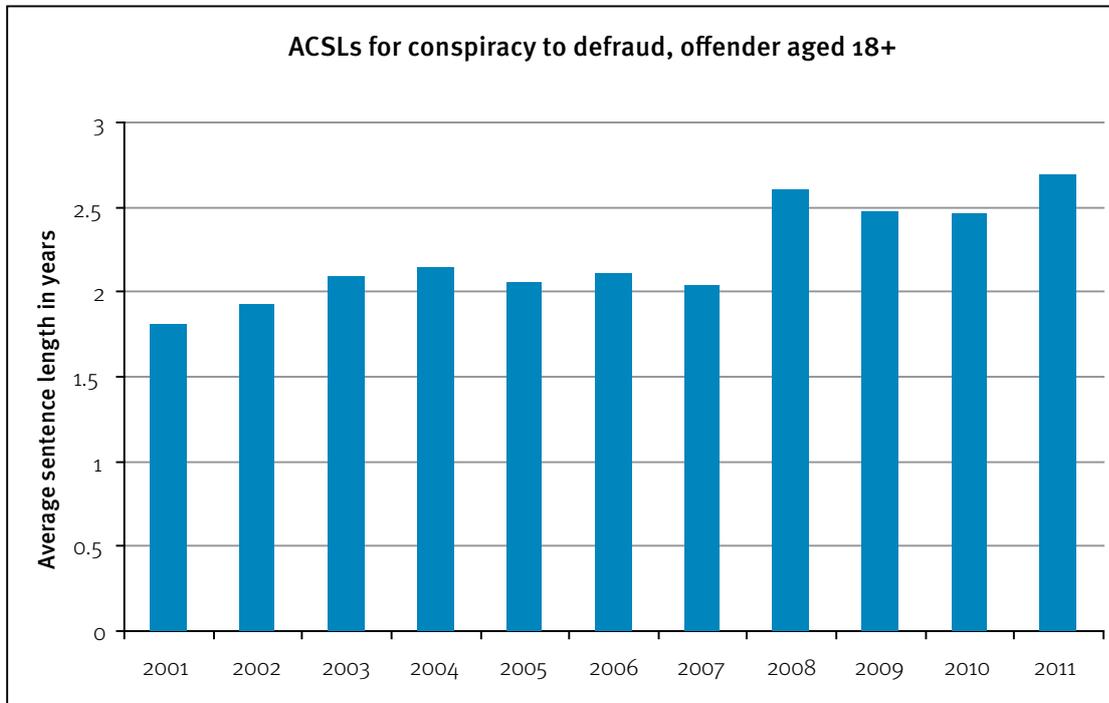
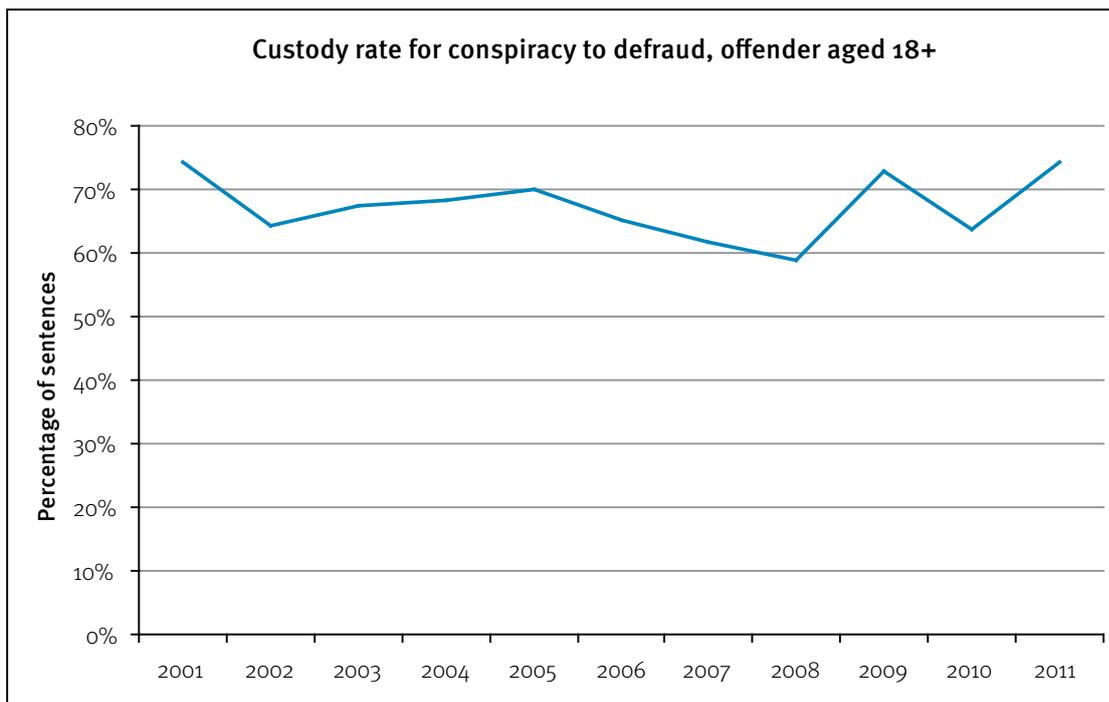


Chart 3



Resource implications of recent changes in sentencing

Charts 2 and 3 show that between 2010 and 2011, there was an increase in both the custody rate and ACSLs. The custody rate increased from 64 per cent to 74 per cent and ACSLs increased two months from two years six months to two years eight months.

Greater use of custody, and longer custodial sentence lengths would both serve to increase pressure on prison service resources. However, it is not clear whether this change is due to changes in sentencing practice, changes in the severity of cases coming before the court, changes in the characteristics of the offenders who are sentenced or other factors.

Sentencing volumes increased between 2010 and 2011 by nine per cent, which would serve to amplify the resource effects of longer sentence lengths. However, the volume of

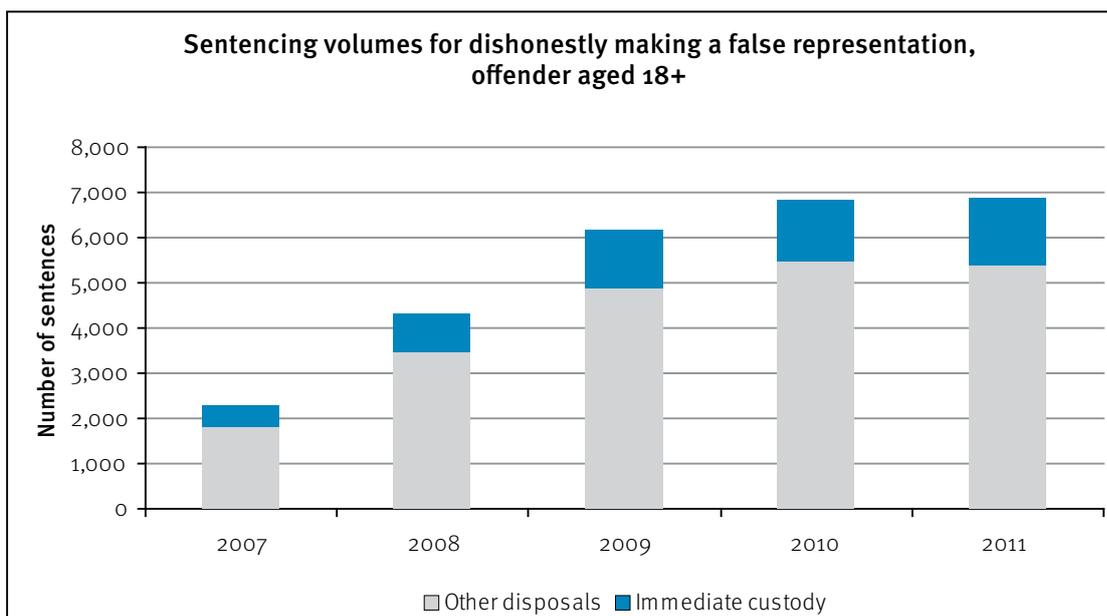
sentences is a non-sentencing factor so this is discussed more fully in the non-sentencing factors report at Annex C of this annual report.

Increases in the average severity of sentencing: dishonestly making a false representation

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

- dishonestly using a credit card to pay for items;
- phishing (online banking fraud); and
- selling goods as genuine 'designer' items but knowing this might be untrue.

Chart 4



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

Chart 4 on page 43 shows sentencing volumes for the Fraud Act 2006 offence. There were large increases in sentencing volumes each year between 2007 and 2010. Part of these increases can be explained by how recently the offence was introduced – there may be a considerable time lag between an offence being committed and the offender being sentenced, which means that increasing sentencing volumes would be expected in the first few years after an offence was introduced.

By 2011, these time lags would be expected to have worked their way through the criminal justice system, and would be unlikely to be causing increases in volumes. This appears to be confirmed by the most recent data on sentencing volumes: between 2010 and 2011 there was little change in sentencing volumes for this offence.

Chart 5 shows there has been little change in the proportions of the various disposal types used between 2010 and 2011. The use of community orders decreased slightly, from 39 per cent to 38 per cent of all disposals, and there were slight increases in the use of Suspended Sentence Orders and immediate custody.

Chart 6 shows that ACSLs for this offence have increased each year since the offence was introduced. Between 2010 and 2011, the ACSL increased by 22 per cent, from 9.7 to 11.8 months. Since there has been little change in the relative use of the different disposal types, this points to an increase in the average severity of sentencing.

Resource effects

ACSLs for this offence increased by 2.1 months for the 1,480 offenders who were sentenced to immediate custody for this offence in 2011. This would cause upward pressure on the resources required by the prison service to administer sentences for this offence.

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

Increases in the average severity of sentencing: non-domestic burglary

Sentencing trends

Non-domestic burglary was one of the offences that was most frequently charged for offences that occurred during the public disorder of August 2011. As a result, an increase may be expected in sentencing volumes and the severity of sentencing in the months after these offences were committed. Further information on the sentencing that resulted from offences committed during the public disorder of 6 to 9 August 2011 has been published by the Ministry of Justice and can be found on their website.³⁷

In contrast to the rest of this report which looks at annual data, this section presents data for non-domestic burglary on a quarterly basis so the effects of the public disorder on sentencing are clearer. The timing of the public disorder means that sentencing for these offences will appear in sentencing data for the third quarter of 2011 onwards. However, even after this date, most cases of

³⁷ <http://www.justice.gov.uk/statistics/criminal-justice/public-disorder-august-11>

Chart 5

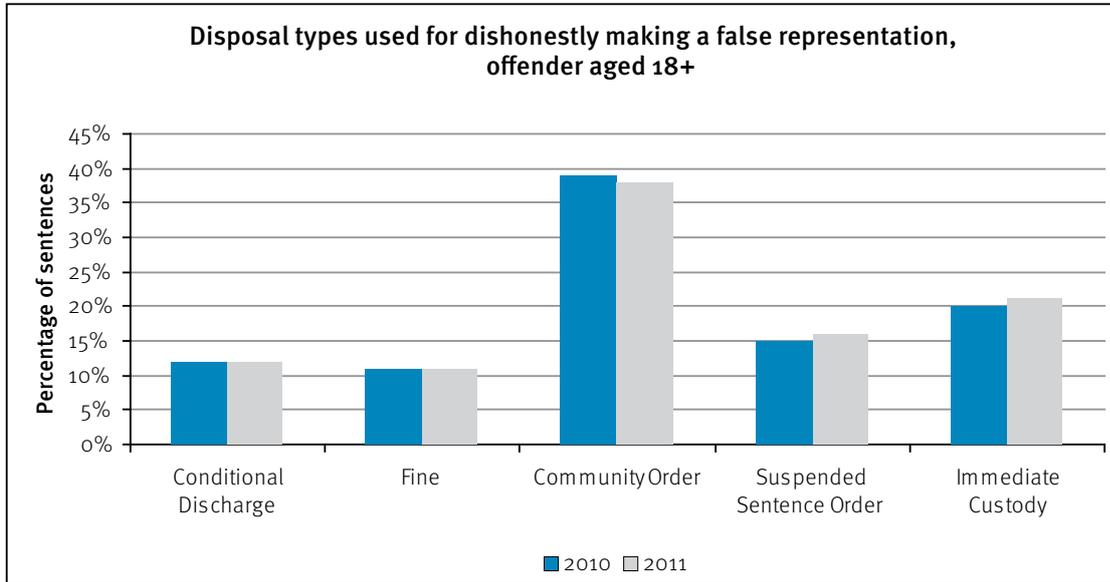
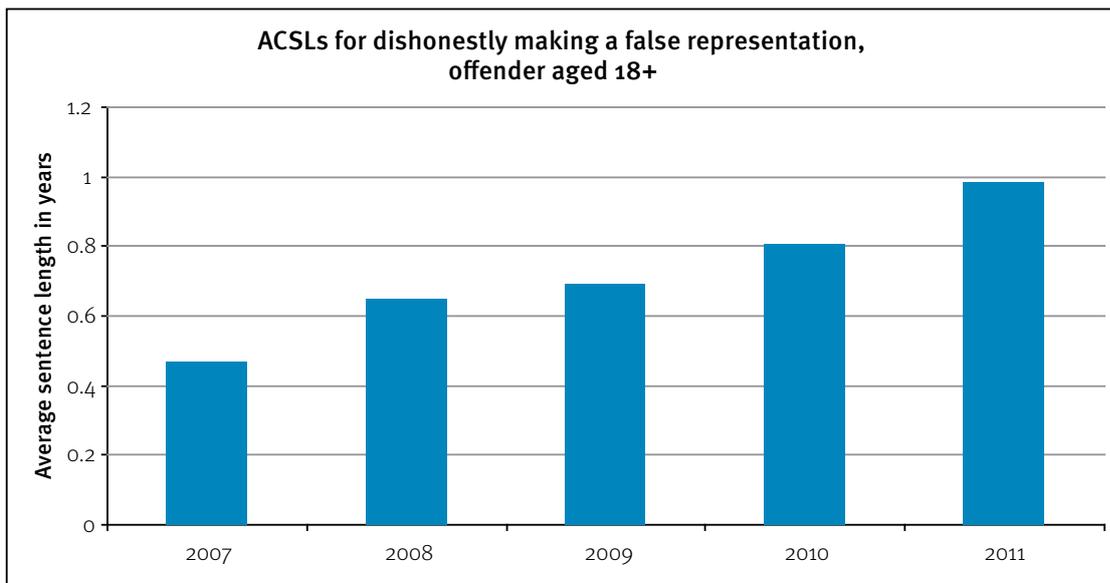


Chart 6



non-domestic burglary are unrelated to the public disorder. This is because the volume of non-domestic burglary cases stemming from the public disorder is small relative to the overall caseload for non-domestic burglary.

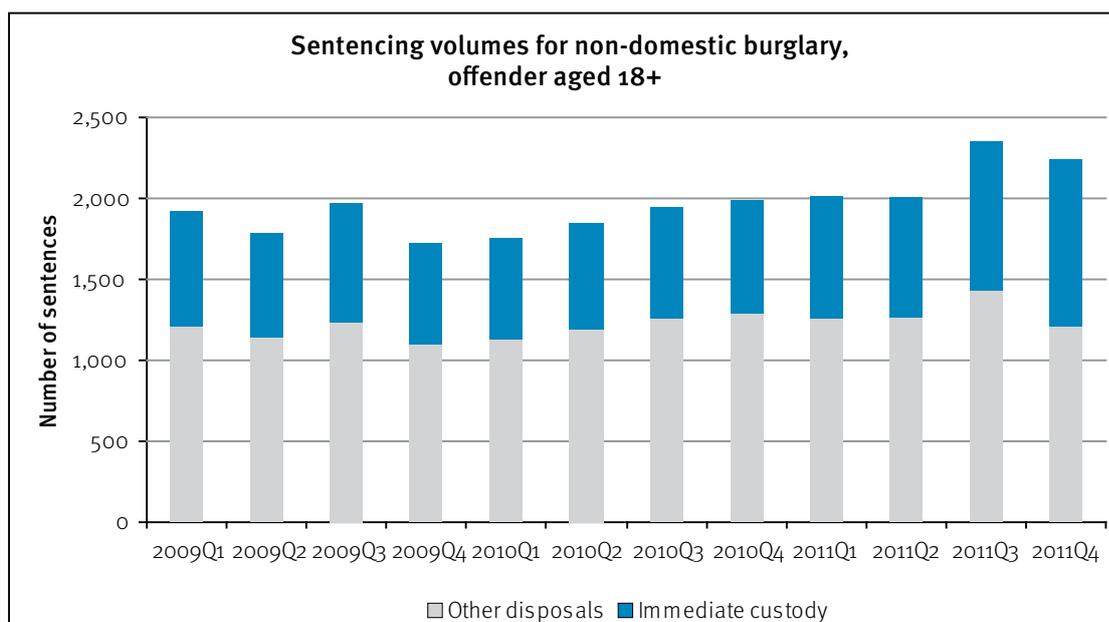
Chart 7 shows sentencing volumes for this offence from quarter one in 2009 to quarter four in 2011. There was a noticeable increase in sentencing volumes between quarter two in 2011 and quarter three in 2011, which was linked to sentencing for public disorder-related offending.

Chart 8 shows the custody rate for this offence. There was a sharp increase in the custody rate between quarter two of 2011 and quarter four of 2011, from 37 per cent to 46 per cent, which is due in part to the effect of public order-related sentences. It is

noticeable that most of this increase occurred between quarter three and four, rather than between quarter two and three, when the first of the public disorder-related sentences came to court. This is likely to be because more serious cases take longer to make their way through the court system due to their greater complexity. Many of the most serious public disorder-related cases would therefore not have been sentenced until quarter four of 2011 and beyond.

Chart 9 shows average custodial sentence lengths for non-domestic burglary in months. During the three year period from 2009 to 2011, ACSLs were highest in quarter four of 2011 at 9.9 months. This is partly a result of the influence of public disorder-related sentences, for which ACSLs were higher than for other burglary offences.³⁸

Chart 7



³⁸ See Table 6 on page 9 of <http://www.justice.gov.uk/downloads/statistics/criminal-justice-stats/august-public-disorder-stats-bulletin-230212.pdf>

Chart 8

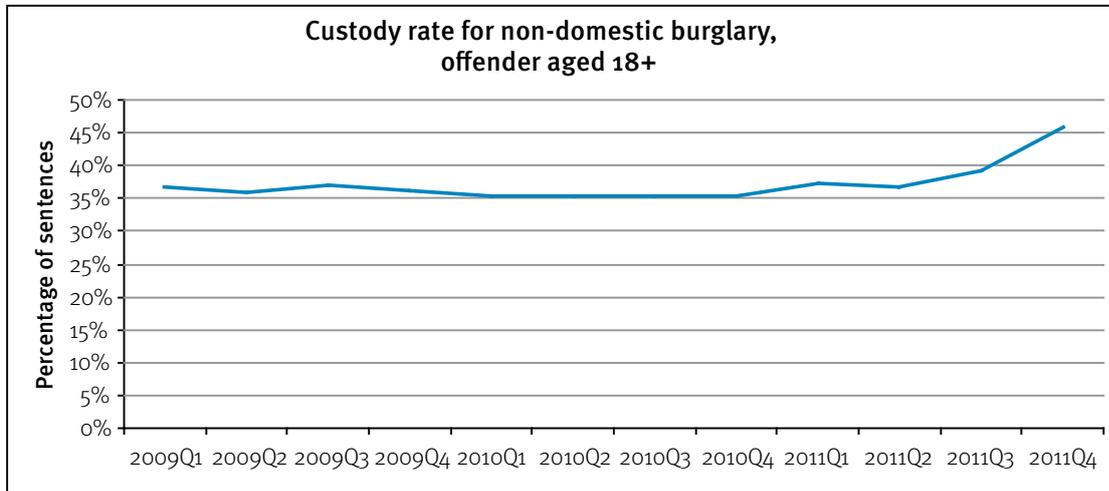
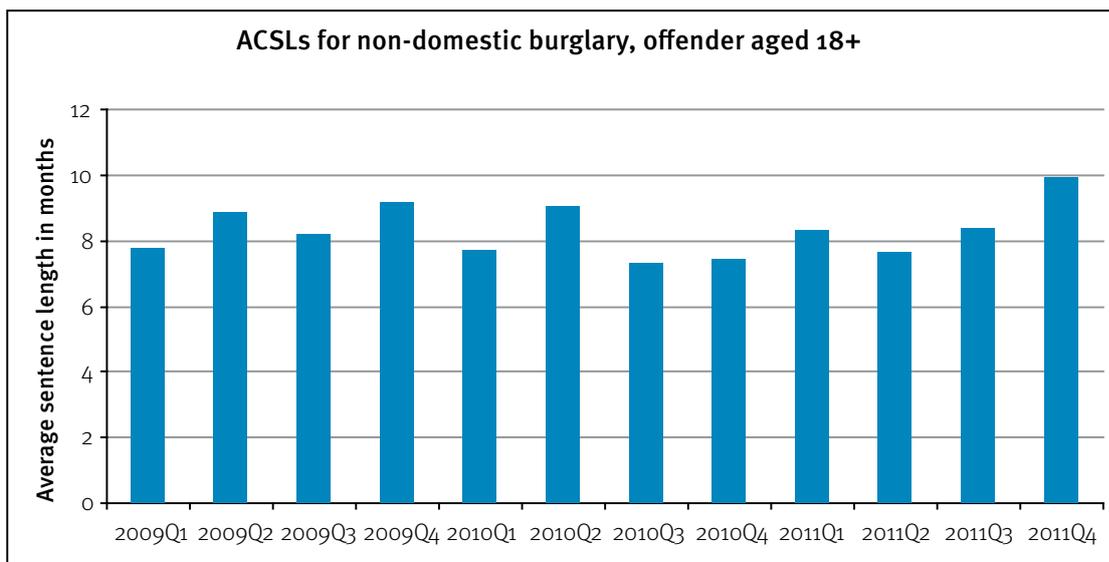


Chart 9



Resource effects of changes in the severity of sentencing, 2010 to 2011

Overall, between 2010 and 2011, the custody rate for this offence rose from 35 per cent to 40 per cent and ACSLs rose from 7.9 to 8.7 months. These changes are likely to put increased pressure on correctional resources for the Prison Service.

As yet, it is unclear whether there will be any long term effects on sentencing for this offence due to the public disorder in August 2011. It is therefore not clear whether sentencing will remain elevated in the longer term, or return to the levels seen before August 2011.

Increases in the average severity of sentencing: attempted rape of a female aged 16 or over

Chart 10 shows sentencing volumes for this offence. Sentencing volumes are low, and have fluctuated between 30 and 60 cases a year between 2001 and 2011.

Chart 11 shows average custodial sentence lengths for this offence. There has been no clear trend over the past decade. However, there was a sharp increase between 2010 and 2011, from four years eight months to five years 11 months.

However, between 2010 and 2011 there was also a reduction in the proportion of indeterminate sentences for this offence, from 32 per cent of custodial sentences in 2010 to 26 per cent of custodial sentences in 2011. Since indeterminate sentences tend to be used in relatively serious cases, they are often equivalent to relatively long determinate

sentences. In terms of the overall severity of sentencing for this offence, the decline in the proportion of IPP sentences therefore offsets the increase in average custodial sentence lengths for custodial sentences to some degree.

Resource effects

The increase in ACSLs for this offence would cause upward pressure on the resources required by the prison service to enact sentences for this offence. This will be offset to some extent by the decrease in the proportion of custodial sentences which are IPPs, since IPP sentences are very resource intensive.

However, it is not clear whether the changes in ACSLs identified are due to changes in sentencing practice, changes in the severity of cases coming before the court, changes in the characteristics of the offenders who are sentenced or other factors. For this offence, particular caution should be exercised in interpreting the cause of the change in ACSLs due to the low sentencing volumes for this offence and the recent fluctuations in sentencing volumes. For example, low sentencing volumes mean that a small number of unusual or exceptional cases could skew the average severity of cases in any particular year.

Decreases in the average severity of sentencing: kidnapping

Chart 12 on page 50 shows that sentencing volumes for kidnapping are relatively low. The chart shows that over the past decade, volumes have fluctuated between around 120 and 160 for this offence in most years. There have been declines in the past two years, however, from a peak of 185 in 2009 to 128

Chart 10

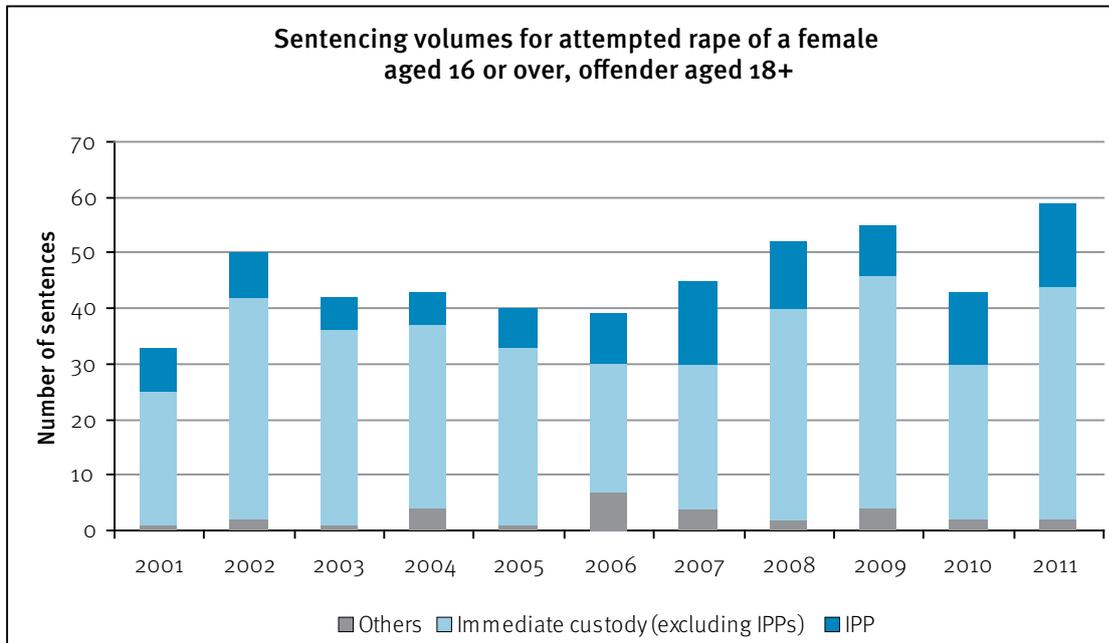


Chart 11

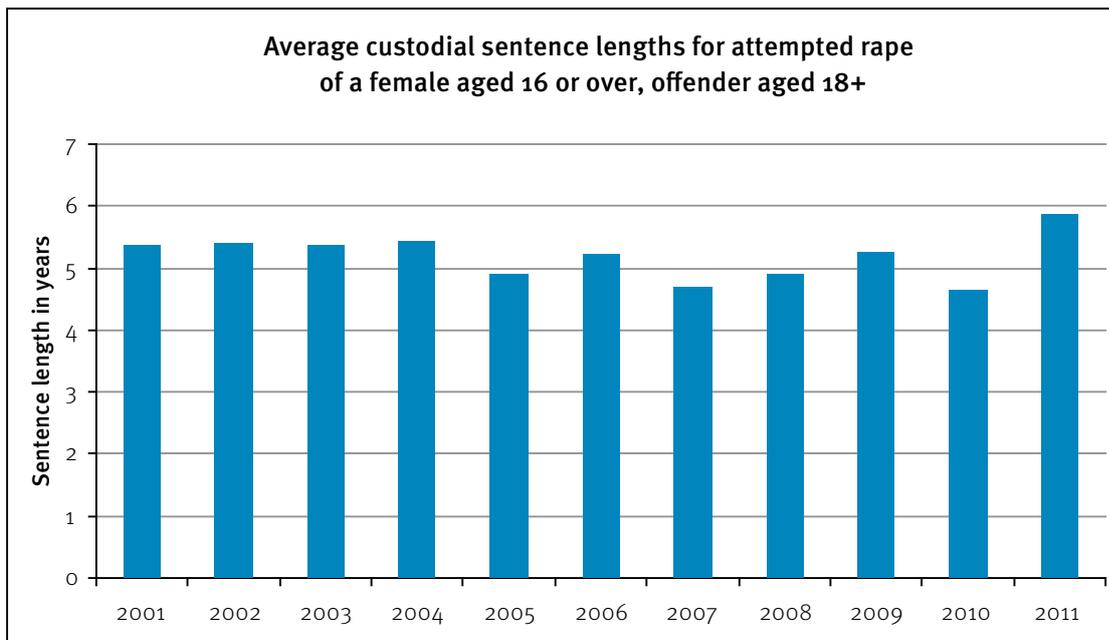


Chart 12

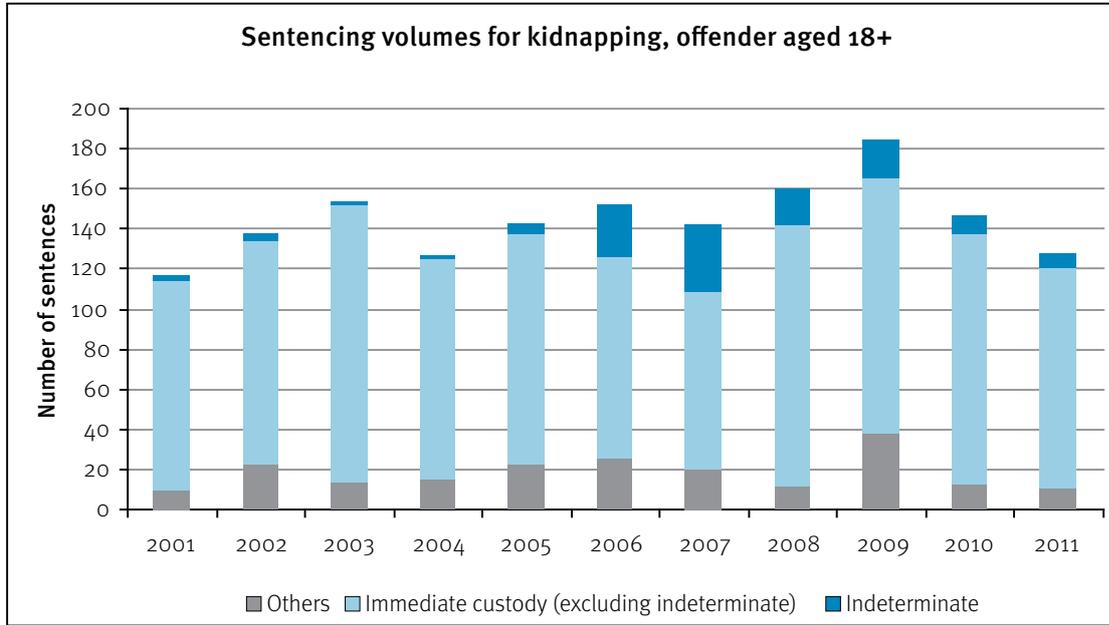


Chart 13

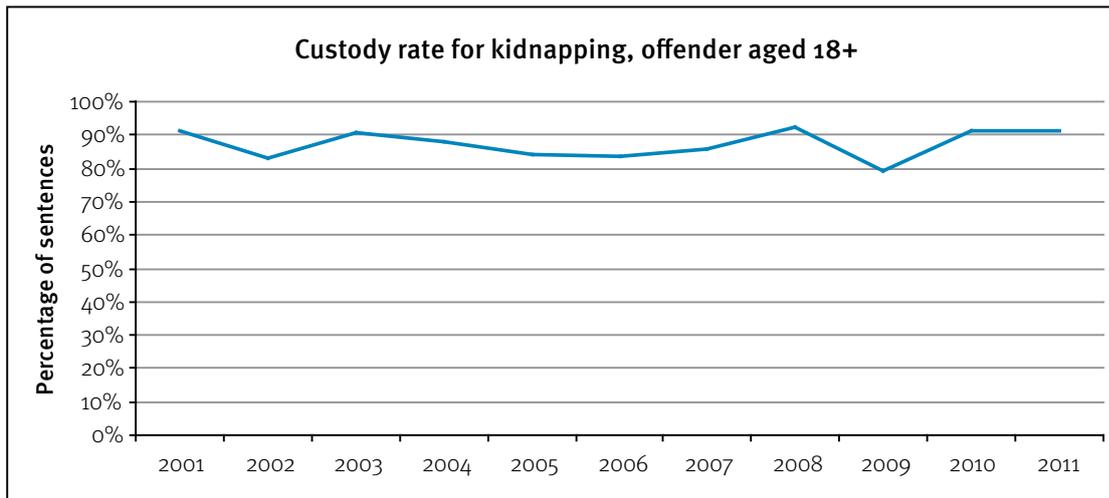
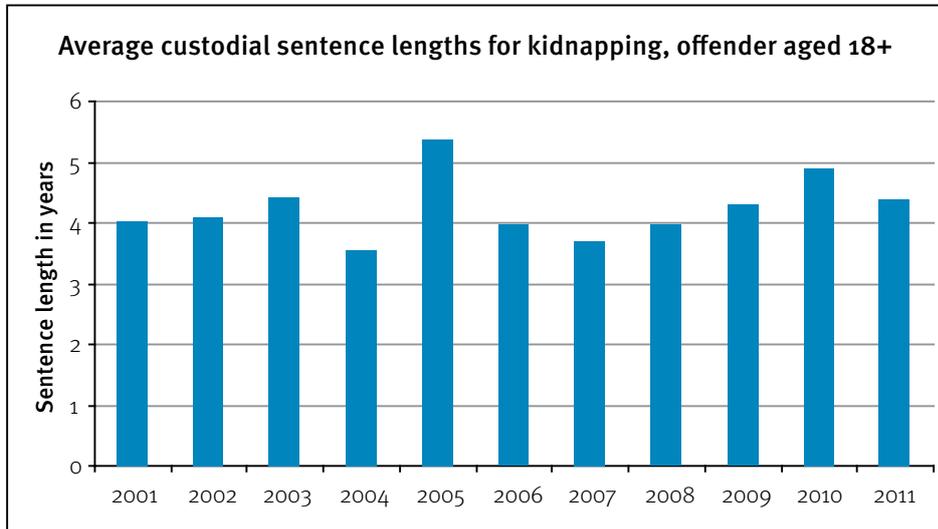


Chart 14



in 2011. Indeterminate sentences are used relatively frequently for this offence. In 2011, six per cent of sentences were indeterminate.

Chart 13 shows that the custody rate for this offence has been fairly steady for this offence over the past decade, averaging 87 per cent over the period.

Chart 14 shows no clear trend in average custodial sentence lengths over the period 2001 to 2011. The time series is quite volatile, with multiple peaks and troughs, which is probably a consequence of the relatively low sentencing volumes.

From 2010 to 2011 there was a decrease in ACSLs from four years 11 months to four years five months. Since the custody rate was constant between 2010 and 2011 at 91 per cent, and there was also no change in the proportion of sentences which were indeterminate, this indicates that the average severity of sentencing fell during the period.

The volatility of ACSLs is likely to be due in part to the low volumes of sentences. Low sentencing volumes mean that a small number of unusual cases could cause substantial shifts in average sentences in a particular year, so caution must be exercised in making inferences about the reasons for changes in ACSLs.

Resource effects

The decrease in average custodial sentence lengths between 2010 and 2011 of around six months will cause a reduction in pressure on the correctional resources required to give effect to sentences for kidnapping.

However, it is not clear whether the decrease in ACSLs is due to a change in sentencing practice for this offence, or due to other factors such as a change in the severity of the caseload from year to year. Firm conclusions therefore cannot be drawn about whether any of the reduction in average custodial sentence lengths between 2010 and 2011 was due to changes in sentencing practice.

Annex C:

Non-sentencing factors report

Introduction

The Sentencing Council is required under section 131 of the Coroners and Justice Act 2009 to prepare a non-sentencing factors report to identify the quantitative effect which non-sentencing factors are having or are likely to have on the resources needed or available for giving effect to sentences imposed by courts in England and Wales.

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

Definition of non-sentencing factors and their significance

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

Non-sentencing factors are factors which do not relate to the sentencing practice of the courts, but which may affect the resources required to give effect to sentences. For example, the volume of offenders coming

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

Overview of changes in non-sentencing factors

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

Since the Council's annual report in 2010/11, the government has implemented a number of changes to sentencing and the way in which sentences are administered through the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012, which received Royal Assent on 1 May 2012. The central objectives behind the changes are to ensure offenders face robust, demanding and effective punishments; pay back to victims and society; and are rehabilitated effectively. These objectives are to be achieved through, for example, payment by results models; increased flexibility for courts to decide on appropriate disposals for youths; more effective community sentences; making prisons places of hard, meaningful work; and a new sentencing regime replacing the Imprisonment for Public Protection (IPP) sentence.

It is likely that these changes will have direct resource effects because sentences will be administered differently. However, the most important resource effects are likely to be the indirect result of more effective sentencing. For instance, a reduction in re-offending would reduce the inflow of offenders into the system and therefore the resources required to give effect to sentences. Reduced re-offending would also be expected to influence other non-sentencing factors, for instance, breach rates and recalls to custody may be expected to fall, which would also reduce resource requirements.

The LASPO Act created a new youth remand and sentencing structure to provide courts with more flexibility to decide on appropriate disposals. This is a further shift in an area of the criminal justice system which continues to undergo considerable change. Significant reductions in the number of first-time entrants into the youth justice system can be observed in the period from 2008 to 2011, with 84,643 first-time entrants in 2008 which dropped to 38,613 in 2011, representing a 54 per cent decrease over this three year period. There have also been declines in the number of young people in custody with data showing that in June 2011, the population of offenders aged 15 to 17 in custody stood at 1,581, five per cent lower than in June 2010. The declines in the number of youths in custody are likely to be a combination of sentencing and non-sentencing factors: fewer young people are entering the system, and at the same time, there has been a focus on ensuring that young people do not receive a custodial sentence where a community sentence would be more appropriate.

Fewer entrants into the youth justice system will undoubtedly cause reductions in the requirement for resources to give effect to

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

Wider societal factors also influence the criminal justice system. The continuing economic downturn is likely to influence patterns of offending in ways which are not well understood. For example, some academic studies suggest that troubled macroeconomic conditions may cause increases in acquisitive crime. However, the evidence for this in published statistics has been mixed. For instance, figures from the Crime Survey of England and Wales (CSEW – formerly the British Crime Survey) show that “despite some apparent fluctuations from year to year, the underlying trend has remained fairly flat in the CSEW since 2005”.³⁹ Furthermore, “where recent releases have shown apparent increases in burglary, these have resulted from figures being compared with some unusually low burglary estimates in 2009.” On the other hand, the recorded crime of ‘Other theft or unauthorised taking’,⁴⁰ which had been falling for the previous seven years, rose ten per cent between 2009/10 and 2010/11.

The economic downturn has also been associated with a drive for efficiency and austerity across government. This continues to affect all agencies of the criminal justice system and is likely to result in reductions in the resources available to give effect to

³⁹ <http://www.ons.gov.uk/ons/rel/crime-stats/crime-statistics/year-ending-december-2011/stb-crime-stats-dec-2011.html>

⁴⁰ This includes offences of theft of unattended personal or household property (for example, a mobile phone not being carried on the person or a ladder stolen from a back garden) and also thefts against commercial and other organisations (for example, theft of metal or industrial equipment)

sentences, relative to what would have been the case in the absence of the downturn. These reductions could have implications for the effectiveness of sentencing and the rate of re-offending, although they may be counteracted by better and more efficient use of resources. It is also possible that cuts in resources may affect the detection of crime. In particular, the Council notes that the significant cuts in police budgets which have been announced may affect the police's ability to detect offences and apprehend criminals relative to a situation in which budget cuts were not required, although again this may be countered by increases in efficiency.

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

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

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

An example will clarify the complexity of the problem. Supposing from one year to the next, it was observed that there was a rise in severity of offences coming before the court. This would have a direct effect on correctional resources as offenders received longer and more onerous sentences. In

turn, this change could interact with other non-sentencing factors such as future breach rates in complicated and unforeseen ways, causing further knock-on effects on resources. Identifying the total resource effect – including both the direct and indirect effects – is therefore very difficult. To make matters worse, at the same time, many other changes may be affecting the criminal justice system, which could also affect non-sentencing factors such as breach rates. Unpicking all of these factors is therefore extremely complicated.

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

The factors surveyed are:

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

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

Sources of data

All data presented in this report are the latest published statistics from the Ministry of Justice and its agencies. The Ministry of Justice publishes statistics throughout the

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

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

A total of 1,299,251 defendants were sentenced in 2011, down five per cent from 1,365,347 offenders in 2010.⁴¹

Decreases in the volume of sentences came disproportionately from decreases in the number of summary offences, which is the least serious category of offences.⁴² This is shown in Table 1.

Despite the overall decrease in the volume of sentences, there were increases in sentencing volumes at the Crown Court, which is the court in which the most serious cases are heard.⁴³ This is shown in Table 2. Further investigation has shown that the increase in cases at the Crown Court was due to an increase in the number of cases which were committed for sentence. These are cases in which the defendant has been found guilty or has pleaded guilty at a magistrates' court, but the magistrate declines jurisdiction for sentencing and instead commits the case to the Crown Court.

The overall changes in sentencing patterns surveyed in these tables disguise significant

differences between offence types. Chart 1 shows the change in sentencing volumes for indictable offences, broken down by offence group.

There have been increases in the volume of cases in the offence categories of burglary, robbery and sexual offences which suggests that these categories are sources of increasing resource pressure. In other offence categories, the volume of cases has decreased.⁴⁴ Further analysis shows that the increase in the volume of burglary offences occurred primarily in the second half of 2011. This is likely to be partly due to sentencing for offences committed during the public disorder of 6 to 9 August 2011.⁴⁵

Chart 2 on page 58 shows that, amongst summary offences, the greatest declines in sentencing volumes between 2010 and 2011 occurred amongst motoring offences.

Table 3 on page 58 shows the change in the use of the various disposal types between 2010 and 2011. The table shows a movement towards the use of more severe and resource intensive sentences, which is consistent with the figures in Table 1 and Table 2 which suggest that the average severity of the caseload has increased.

Table 3 shows that there were significant decreases in the number of community sentences passed. However, there was an increase in the number of immediate custodial sentences passed, which tend to be the most resource intensive sentences to enact.

⁴¹ These figures refer to the number of defendants who were sentenced as opposed to the number of offences for which they were sentenced. These two statistics differ because a defendant may be sentenced for multiple offences on a single sentencing occasion.

⁴² Summary offences are almost always tried in the magistrates' courts. "Indictable offences" includes triable either way offences and indictable only offences. Triable either way offences can be dealt with in either court, whilst indictable only offences must be dealt with at the Crown Court.

⁴³ Crown Court sentencing volumes are influenced by the severity of the caseload, but are also influenced by allocation decisions. That is, there may have been changes in the propensity of magistrates to decline jurisdiction, or the propensity of defendants to elect for a Crown Court trial.

⁴⁴ It should also be noted that the number of offenders sentenced is not necessarily a good reflection of the number offences which have taken place because not all offences are detected and not all offenders are caught. Care should therefore be taken in interpreting the figures in chart 1 as indicators of changes in the volumes of offences which have been committed.

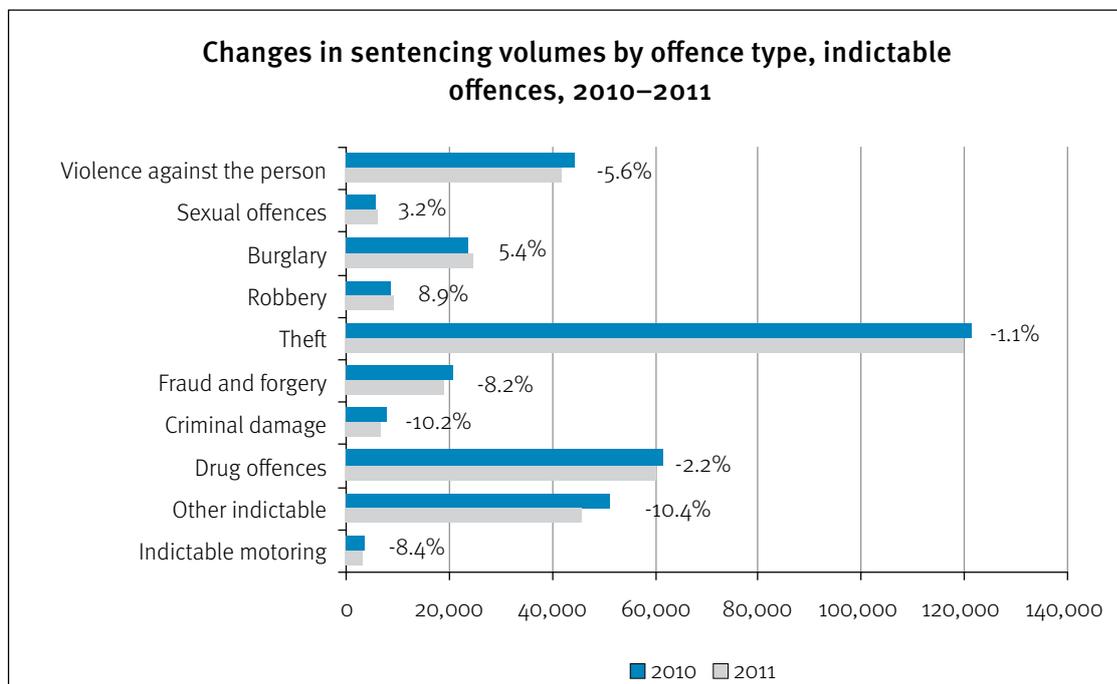
⁴⁵ Further information on the sentencing that resulted from offences committed during the public disorder of 6 to 9 August 2011 has been published by the Ministry of Justice and can be found at the following link: <http://www.justice.gov.uk/statistics/criminal-justice/public-disorder-august-11>

Table 1 – Number of offenders sentenced by offence category, 2010 and 2011

Category of offence	2010	2011	Percentage change
Indictable ⁴⁶	348,220	337,102	-3.2%
Summary	1,017,127	962,149	-5.4%
Total	1,365,347	1,299,251	-4.8%

Table 2 – Number of offenders sentenced by court type, 2010 and 2011

Court type	2010	2011 ⁴⁷	Percentage change
Crown Court	101,951	102,164	0.2%
Magistrates' courts	1,263,396	1,197,087	-5.2%
Total	1,365,347	1,299,251	-4.8%

Chart 1

⁴⁶ "Indictable offences" includes triable either way offences and indictable only offences.

⁴⁷ This data is the official Ministry of Justice sentencing data for 2011. Note that these figures may differ slightly from those quoted in the 2011 Annual CCSS publication for reasons explained in that report.

Chart 2

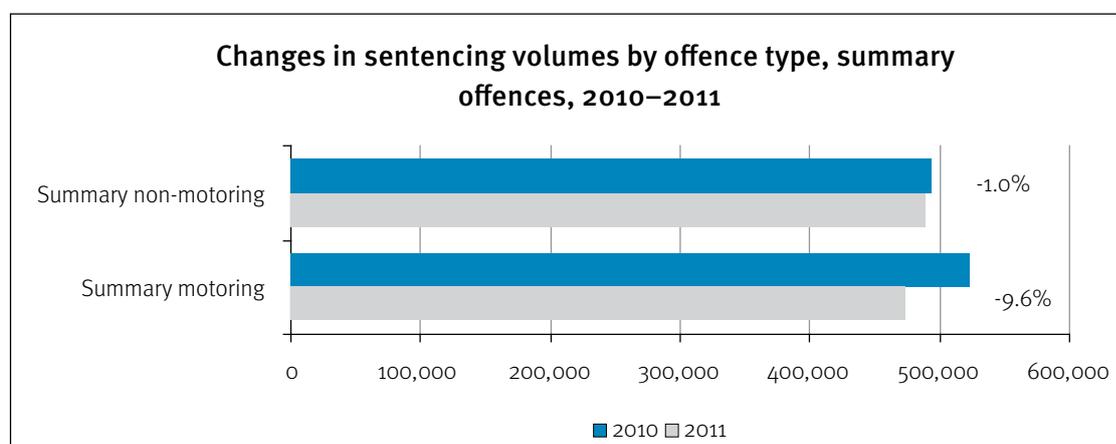


Table 3 – Volume of disposals of various types, 2010 to 2011, all offenders

	Proportion of sentences		Absolute number of sentences	
	2010	2011	2010	2011
Absolute Discharge	0.6%	0.6%	8,848	8,066
Conditional Discharge	6.6%	6.5%	90,510	84,967
Fine	65.5%	65.5%	893,931	851,607
Community Order	13.9%	13.3%	189,321	173,434
Suspended Sentence Order	3.5%	3.7%	48,118	47,798
Immediate Custody	7.4%	7.9%	101,513	102,698
Other	2.4%	2.4%	33,106	30,681

Further analysis of the data shows that amongst the custodial sentences, there was also an increase in the average custodial sentence length (ACSL) to 14.7 months years' custody in 2011, up by one month from 2010.

However, care should be taken in ascribing all of these changes to non-sentencing factors. In particular, changes in the average severity of sentences may be explained by either sentencing or non-sentencing factors. It is not clear how much of the increases in

the average severity of sentences can be explained by increases in the severity of the caseload because there may simultaneously have been changes in sentencing practice.

Overall these figures on the volumes of sentences and the disposal types used point to an ambiguous picture in terms of correctional resources. Since there has been an increase in the ACSLs and in the number of prison sentences, this suggests that between 2010 and 2011 there was increasing pressure on prison service resources. However, at the

same time there have been decreases in the numbers of Suspended Sentence Orders and community orders passed, which would cause a decrease in requirements for probation service resources.

Recall

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

The number of offenders in custody as a result of recall exhibited little change between 2010 and 2011: at the end of December 2010 there were 5,548 offenders in custody as a result of recall, and at the end of December 2011 the figure was 5,561.

This has occurred even though the number of offenders on post-release supervision has increased to 40,049 at the end of 2011, from 37,229 at the end of 2010.

This suggests there may have been a fall in the rate at which offenders are recalled, because otherwise an increasing number of offenders on post-release supervisions may have been expected to lead to more offenders in prison as a result of recall.

These figures suggest that there has been little change in pressure on prison resources arising from the recall of offenders.

Breach

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

Detailed data is not published on the number of offenders who breach community orders or Suspended Sentence Orders or the outcomes of these breaches. However data is published on the reasons for the termination of these orders. This is presented in the following two sections.

Breaches of community orders

Between 2010 and 2011, there was a slight increase in the proportion of orders which ran their full course. The percentage of orders which were terminated early as a result of a conviction for an offence remained constant at 10 per cent. See Table 4 on page 60.

Breaches of Suspended Sentence Orders

Between 2010 and 2011, there was a slight increase in the proportion of Suspended Sentence Orders which ran their full course. The percentage of orders which were terminated early as a result of a conviction for an offence remained constant at 15 per cent.

Overall this data suggests that patterns of breaches of community orders or Suspended Sentence Orders are not a significant source of changing pressure on criminal justice system resources. See Table 5 on page 60.

Table 4 – Percentage of terminations of community orders by reason, 2010 and 2011

	2010	2011
Ran their full course	53%	55%
Terminated early for:		
Good progress	12%	11%
Failure to comply with requirements	15%	14%
Conviction of an offence	10%	10%
Other reasons	10%	10%
All Community Orders (=100%)	130,474	125,778

Table 5 – Percentage of terminations of Suspended Sentence Orders by reason, 2010 and 2011

	2010	2011
Ran their full course	56%	57%
Terminated early for:		
Good progress	11%	10%
Failure to comply with requirements	12%	11%
Conviction of an offence	15%	15%
Other reasons	7%	7%
All Suspended Sentence Orders (=100%)	45,458	47,132

Patterns of re-offending

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

The figures in this section are the latest statistics which have been published by the Ministry of Justice. They are based on tracking the proven re-offences of the cohort of adult offenders who were discharged from custody, otherwise sanctioned at court, received a caution, reprimand or warning or tested positive for opiates or cocaine in the period

June 2009 to June 2010. In what follows, this group will be referred to as ‘the latest cohort’. The group of such offenders from the period July 2008 to June 2009 will be referred to as ‘the previous year’s cohort’.⁴⁸

The re-offending rate for the latest cohort dropped by 0.3 percentage points to 24.9 per cent when compared to the previous year’s cohort. The re-offending rate is a measure of the percentage of offenders in the cohort who commit proven re-offences in a one year follow-up period, with a further six months for offences to be proved.

The average number of re-offences per re-offender in the latest cohort was 2.82, a fall of one per cent compared to the previous year’s cohort. This is a measure of the average

⁴⁸ Further details of the definitions and measurement of re-offending statistics can be found here: <http://www.justice.gov.uk/downloads/statistics/reoffending/proven-reoffending-definition-measurement.pdf>

number of proven re-offences committed by offenders in the cohort amongst those offenders who re-offend.

Finally, the re-offending rate for severe offences in the latest cohort stayed constant at around 2.5 per cent. This is a measure of the proportion of offenders in the cohort who are proven to commit a 'serious' re-offence. Serious re-offences are any proven re-offence within a list of the most serious offences.

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

Overall, these figures suggest that resource pressures from re-offending may have reduced amongst the most recent cohort, relative to the previous year's cohort.

Release decisions by the Parole Board

In recent years, changes to release provisions have meant that the Parole Board makes release decisions in fewer cases than previously. The Parole Board is now responsible for making release decisions for offenders who have been recalled to custody and are ineligible for 28 day fixed term recall, and offenders who have received indeterminate sentences. They also make

release decisions in a declining number of legacy cases for offenders who were given determinate sentences under historical provisions. The primary resource impact of release decisions is on the prison service.

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

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

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

The Parole Board's workload also has an important impact on requirements for correctional resources, because if capacity is not available to evaluate an offender's case, then no decision can be made to release an offender. In 2009/10, the Parole Board faced a significant backlog of such cases but in the past year, they have been successful in

clearing 40 per cent of this backlog, which is likely to help alleviate pressure on prison resources.

Remand

The number of offenders in custody on remand decreased by three per cent to 11,907 by 31 March 2012, from 12,300 on 31 March 2011 which suggest decreasing pressure on resources from offenders on remand.

This decrease over this time period can be attributed to a decrease amongst untried offenders. There was no significant change in the volume of offenders on remand who had been convicted but not sentenced.

Annex D: Summary of activities by legislative function

Mandatory requirements for annual report

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

The Council's functions

With regard to guidelines, the Council:

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

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

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

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

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

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

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

With regard to resources, the Council:

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



Copies of this report may be obtained from our website:
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