

## Final Resource Assessment: Arson and Criminal Damage Offences

### 1 INTRODUCTION

1.1 This document fulfils the Council's statutory duty to produce a resource assessment which considers the likely effect of its guidelines on the resources required for the provision of prison places, probation and youth justice services.<sup>1</sup>

### 2 RATIONALE AND OBJECTIVES FOR NEW GUIDELINE

2.1 In May 2008, the Sentencing Guidelines Council (SGC) published *Magistrates' Court Sentencing Guidelines* (MCSG), covering most of the offences regularly going before a magistrates' court. This included guidance for the offences of arson, criminal damage, and racially or religiously aggravated criminal damage. There are currently no sentencing guidelines for criminal damage/arson with intent to endanger life, or reckless as to whether life endangered, or the threats to destroy or damage property offences. The Council has published new sentencing guidelines for all these offences, for use in all courts in England and Wales.

2.2 The Council's aim in developing the guideline has been to ensure that sentencing for these offences is proportionate to the offence committed and to promote a consistent approach to sentencing.

### 3 SCOPE

3.1 As stipulated by section 127 of the Coroners and Justice Act 2009, this assessment considers the resource impact of the guideline on the prison service, probation service and youth justice services. Any resource impacts which may fall elsewhere are therefore not included in this assessment.

3.2 This resource assessment covers the following offences:

- Arson;

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<sup>1</sup> Coroners and Justice Act 2009 section 127:  
[www.legislation.gov.uk/ukpga/2009/25/section/127](http://www.legislation.gov.uk/ukpga/2009/25/section/127)

- Criminal damage with a value not exceeding £5,000;
- Criminal damage with a value exceeding £5,000;
- Racially or religiously aggravated criminal damage;
- Criminal damage/arson with intent to endanger life, or reckless as to whether life endangered; and
- Threats to destroy or damage property.

#### **4 CURRENT SENTENCING PRACTICE**

4.1 To ensure that the objectives of the guideline are realised, and to understand better the potential resource impacts of the guideline, the Council has carried out analytical and research work in support of it.

4.2 The intention is that the new guideline will encourage consistency of sentencing and in the majority of cases will not change overall sentencing practice. In order to develop a guideline that maintains current practice, knowledge of recent sentencing was required.

4.3 Sources of evidence have included the analysis of transcripts of judges' sentencing remarks of arson and criminal damage cases, and references to case law and news articles. Knowledge of the sentencing starting points, ranges and factors used in previous cases, in conjunction with Council members' experience of sentencing, has helped to inform the development of the guideline.

4.4 During the consultation stage, qualitative research was conducted with a group of sentencers, to gauge whether the guideline would work as anticipated. This small-scale research has also provided some further understanding of the likely impact of the guideline on sentencing practice, and the subsequent effect on the prison population.

4.5 In order to obtain more detailed knowledge of current sentencing practice, the Sentencing Council conducted a data collection exercise in a sample<sup>2</sup> of magistrates' courts across England and Wales, from November 2017 to March 2018. As part of this exercise, sentencers were asked to give details of the sentencing factors they took into account and the final sentence they imposed each time they sentenced an adult<sup>3</sup> for one

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<sup>2</sup> In total, 80 magistrates' courts were selected to take part in the exercise, based on the volume of offenders sentenced in those courts over the same period the previous year.

<sup>3</sup> Offenders aged 18 and over only.

of a list of offences. This included the offences of criminal damage with a value not exceeding £5,000 and criminal damage with a value exceeding £5,000, amongst others.<sup>4</sup> Data collected from magistrates' courts as part of this exercise have provided a clearer understanding of the factors currently taken into account by sentencers for criminal damage offences.<sup>5</sup>

4.6 The methodology used to estimate pre-guilty plea sentence lengths<sup>6</sup> has been further developed since the guideline consultation, to ensure it is as robust as possible, and encompasses the full range of data sources available. For arson and criminal damage offences, this includes sources such as the Crown Court Sentencing Survey (CCSS), along with the bespoke data collection carried out in magistrates' courts.

4.7 Detailed sentencing statistics for arson and criminal damage offences covered by the definitive guideline have been published on the Sentencing Council website at the following link:

<http://www.sentencingcouncil.org.uk/publications/?type=publications&s=&cat=statistical-bulletin&topic=&year.>

## **Arson**

4.8 In 2017, around 410 adult offenders were sentenced for arson offences.<sup>7</sup> Immediate custody was the most common sentencing outcome, with 43 per cent of

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<sup>4</sup> The data collection also included the following offences: possession of a bladed article or offensive weapon; harassment and stalking, breach of a protective order; breach of a community order; and breach of a suspended sentence order. Criminal damage was chosen for the data collection as it is a high-volume offence predominantly sentenced in magistrates' courts and therefore it was anticipated that a sufficient number of responses would be collected on which to conduct robust analysis. The other offences covered by the guideline are much lower in volume, and therefore it was not likely that sufficient data would be collected.

<sup>5</sup> The data were collected from magistrates' courts both on paper forms and also online. The analysis of data undertaken for this resource assessment only includes survey responses recorded online (the majority of responses were online).

<sup>6</sup> The sentence length information available in the Ministry of Justice's Court Proceedings Database is the final sentence imposed, after any reduction for guilty plea. Sentence lengths have been adjusted using data from the Crown Court Sentencing Survey (CCSS) to provide estimates of the sentence length before the application of a reduction for any guilty plea. These estimates provide a better indication of the use of sentencing guidelines as the category ranges specified in the guidelines are those before any guilty plea reduction is applied.

<sup>7</sup> The Court Proceedings Database (CPD), maintained by the Ministry of Justice (MoJ), is the data source for these statistics. The data presented in this resource assessment only include cases where the specified offence was the principal offence committed. When a defendant has been found guilty of two or more offences this is the offence for which the heaviest penalty is imposed. Where the same disposal is imposed for two or more offences, the offence selected is the offence for which the statutory maximum penalty is the most severe. Although the offender will receive a sentence for each of the offences that they are convicted of, it is only the sentence for the principal offence that is presented here.

offenders sentenced to immediate custody in 2017. The average (mean) custodial sentence length (ACSL) in 2017 was 1 year 8 months, after any reduction for guilty plea.<sup>8</sup>

**Criminal damage with a value not exceeding £5,000, criminal damage with a value exceeding £5,000, racially or religiously aggravated criminal damage<sup>9</sup>**

4.9 Criminal damage with a value not exceeding £5,000 is the highest volume offence covered by the guideline, with around 19,000 adult offenders sentenced in 2017. The majority of offenders sentenced received either a discharge (29 per cent), a fine (25 per cent), or a community order (26 per cent). Only six per cent of offenders were sentenced to immediate custody in 2017, with an ACSL of one month, after any reduction for guilty plea.

4.10 The number of offenders sentenced for criminal damage with a value exceeding £5,000 decreased in 2017 compared with the previous year, from 340 in 2016 to 290 in 2017. Around 24 per cent of offenders were sentenced to immediate custody in 2017, and the ACSL was nine months, after any reduction for guilty plea.

4.11 Racially or religiously aggravated criminal damage is a single offence (irrespective of the value of damage caused), and is relatively low volume with around 130 offenders sentenced in 2017. Around 41 per cent of offenders sentenced received a community order, and 13 per cent were sentenced to immediate custody. The ACSL for this offence in 2017 was two months, after any reduction for guilty plea.

**Criminal damage/arson with intent to endanger life or reckless as to whether life endangered<sup>10</sup>**

4.12 In 2015, 420 offenders were sentenced for arson with intent to endanger life or recklessly endangering life. The majority of offenders were sentenced to immediate custody (67 per cent), and the ACSL was 3 years 2 months, after any reduction for guilty plea.

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<sup>8</sup> Unless otherwise stated, data on average custodial sentence lengths presented in this resource assessment are those after any reduction for guilty plea. Further information about these sentencing data can be found in the accompanying statistical tables published here: <http://www.sentencingcouncil.org.uk/publications/?s&cat=statistical-bulletin>

<sup>9</sup> Figures presented here exclude criminal damage where the value was not known (around 400 offenders in 2017).

<sup>10</sup> Due to a data issue, figures for these offences are not included for 2016 and 2017. For further information please refer to page 9 of the user guide published alongside MoJ's Criminal Justice Statistics bulletin, available here: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/802058/criminal-justice-statistics-guide-december-2018.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/802058/criminal-justice-statistics-guide-december-2018.pdf)

4.13 Criminal damage with intent to endanger life or recklessly endangering life is a very low volume offence, with around 30 offenders sentenced in 2015. Most offenders were sentenced to immediate custody in 2015 (62 per cent) and the ACSL was 2 years 7 months, after any reduction for guilty plea.

#### **Threats to destroy or damage property**

4.14 Around 470 offenders were sentenced for threats to destroy or damage property in 2017. Just under a quarter of offenders received a community order and 21 per cent were sentenced to immediate custody. The ACSL in 2017 was six months, after any reduction for guilty plea.

## **5 KEY ASSUMPTIONS**

5.1 To estimate the resource effect of a new guideline, an assessment is required of how it will affect aggregate sentencing behaviour. This assessment is based on the objectives of the new guideline, and draws upon analytical and research work undertaken during guideline development. However, assumptions must be made, in part because it is not possible precisely to foresee how sentencers' behaviour may be affected across the full range of sentencing scenarios. Any estimates of the impact of the new guideline are therefore subject to a substantial degree of uncertainty.

5.2 Historical data on changes in sentencing practice following the publication of guidelines can help inform these assumptions, but since each guideline is different, there is no strong evidence base on which to ground assumptions about behavioural change. The assumptions thus have to be based on careful analysis of how current sentencing practice corresponds to the guideline ranges presented in the new guideline, and an assessment of the effects of changes to the structure and wording of the guideline where a previous guideline existed.

5.3 The resource impact of the new guideline is measured in terms of the change in sentencing practice that is expected to occur as a result of it. Any future changes in sentencing practice which are unrelated to the publication of the new guideline are therefore not included in the estimates.

5.4 In developing sentence levels for the guideline, data on current sentence levels have been considered. Existing guidance, transcripts of judges' sentencing remarks and media reports of cases have also been reviewed.

5.5 While data exist on the number of offenders and the sentences imposed, assumptions have been made about how current cases would be categorised across the levels of culpability and harm proposed in the new guideline, due to a lack of data available regarding the seriousness of current cases. As a consequence, it is difficult to ascertain how sentence levels may change under the new guideline.

5.6 During the consultation process views were sought regarding the potential impact of the guideline. Findings from consultation stage research were also considered in the development of the definitive guideline, to mitigate the risk of the guideline having an unintended impact. However, despite this, it remains difficult to estimate with any precision the impact the guideline may have on prison and probation resources.

## **6 RESOURCE IMPACTS**

6.1 This section should be read in conjunction with the guideline available at: <https://www.sentencingcouncil.org.uk>.

### **Summary**

6.2 The expected impact of each guideline is provided in detail below. Overall, the guideline aims to improve consistency of sentencing, but not to change sentencing practice.

6.3 For most offences covered by the guideline, it is not possible to predict whether the guideline will have an impact on prison and probation resources, due to a lack of data available on how current cases would be categorised under the new guideline. For some of these offences, however, analysis of the limited data available indicates that current sentence levels vary within offences, with the likelihood being that some sentences will increase under the new guideline, and some will decrease. Overall, these effects may offset one another, although it is not possible to say for certain what the net effect will be. It is, however, anticipated that sentencing for these offences will become more consistent under the new guideline.

6.4 For criminal damage with a value not exceeding £5,000, it is anticipated that the guideline will result in some changes to fine levels. Specifically, it is estimated that up to around 4,000 offenders<sup>11</sup> may receive a lower fine under the new guideline than

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<sup>11</sup> Figures have been rounded to the nearest 1,000 offenders.

previously. The guideline for these offences is not, however, expected to have any impact on prison or probation resources.

## **Arson**

6.5 The existing Sentencing Guideline Council's MCSG for arson offences contains three categories of seriousness reflecting the 'nature of activity'. For offences that fall into the highest level of seriousness (where significant damage was caused) the existing guideline advises the sentencer to send the offender to the Crown Court for sentencing. The new guideline is for use at all courts and is therefore more comprehensive for sentencing the most serious offences.

6.6 The new guideline adopts the Sentencing Council's standard approach, based on three levels of culpability and three levels of harm, with a sentencing range from discharge up to 8 years' custody. The Council does not intend the guideline to cause changes to average sentencing severity, but is instead aiming to increase consistency of approach to sentencing.

6.7 The statutory maximum sentence for arson offences is life imprisonment, and in 2017 a life sentence was imposed on one offender. For an offender to be sentenced to life imprisonment, the judge must be satisfied that the criteria for dangerousness have been met. This process is the same under the new guideline (which includes information on dangerousness at step five), therefore no change in the number of offenders receiving life sentences is expected under the new guideline.

6.8 Generally, fewer than five offenders each year receive an estimated pre-guilty plea sentence of more than 8 years' custody (the top of the offence range in the new guideline).<sup>12</sup> The guideline allows for these extremely serious cases with the inclusion of a text box above the sentence table, advising sentencers that in exceptional cases within category 1A, sentences above 8 years may be appropriate.

6.9 Around half of offenders sentenced for arson are sentenced in the Crown Court, where there is no existing guidance in place. An analysis of transcripts of Crown Court judges' sentencing remarks found that there is currently some variation in sentence levels for arson offences (which is to be expected given the current lack of guidance). This makes it difficult to assess how sentence levels may change under the new guideline, although it is likely that some will, and that overall, sentences should become

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<sup>12</sup> Pre-guilty plea sentence lengths have been estimated based on the stage at which offenders entered a plea and the reduction given, as found in the Crown Court Sentencing Survey 2014.

more consistent. The Council has set sentencing ranges which it deems appropriate for these offences; in some cases this may result in higher sentences than currently, and in other cases it may result in lower sentences. This analysis of a small sample of cases suggests that if there is any overall net effect in sentence levels it is more likely to be a decrease in custodial sentence lengths rather than an increase, however, this finding is tentative due to the small sample size.

6.10 Based on the data available it is not possible to be certain of the overall impact of the guideline on prison and probation resources. This offence is, however, relatively low volume, with an ACSL of 1 year 8 months in 2017 (after any reduction for guilty plea), and so it is unlikely that any changes in sentencing as a result of the guideline will have a notable impact on prison places.

**Criminal damage with a value not exceeding £5,000, criminal damage with a value exceeding £5,000, racially or religiously aggravated criminal damage**

*Criminal damage with a value not exceeding £5,000*

6.11 The existing guideline for criminal damage in the MCSG covers the offences of criminal damage with a value not exceeding £5,000, criminal damage with a value exceeding £5,000, and racially or religiously aggravated criminal damage. This guideline contains five levels of seriousness based on the amount of damage caused, ranging from 'minor damage' in the lowest level of seriousness, up to 'damage over £10,000' in the highest level.

6.12 The new guideline for criminal damage with a value not exceeding £5,000 has three levels of culpability and two levels of harm, with a sentencing range from discharge up to three months' custody (the statutory maximum sentence for this offence).

6.13 Criminal damage with a value not exceeding £5,000 is the highest volume offence covered by the guideline, with around 19,000 adult offenders sentenced in 2017. Any unintended impact of this guideline therefore has the potential to affect a large number of offenders.

6.14 The consultation stage resource assessment noted a potential risk that the 'sentimental value' aspect of the category 1 harm factor 'High value of damage or damaged items of great sentimental value' in the draft guideline might result in more offenders being placed in the highest category of seriousness. After further consideration the Council has amended this factor to 'High value of damage', and has added the aggravating factor 'Damaged items of great value to the victim (whether economic,



commercial, sentimental or personal value)' at step two, which has removed the potential risk of sentence inflation relating to this factor.

6.15 In the existing guideline for this offence, the starting point at the lowest level of seriousness is a Band B fine. In the new guideline, the starting point for the lowest category of culpability and harm (C2) is a Band A fine. The data collection conducted in magistrates' courts has provided an indication of the seriousness of current cases coming before the court. The vast majority of data collected on criminal damage offences related to cases where the value of the damage was under £5,000.<sup>13</sup> Analysis of this data indicates that the guideline is likely to result in some changes to fine levels. Based on the assumption that offenders placed in the lowest category of seriousness (who currently have a starting point of a Band B fine) will under the new guideline have a starting point of a Band A fine (the starting point in C2), it is estimated that up to around 4,000 offenders<sup>14</sup> may be affected (and may therefore receive a lower fine than previously).<sup>15</sup> The guideline is not, however, expected to have any impact on prison or probation resources, particularly given that the top of the sentence range in the new guideline (three months' custody) is essentially the same as that in the MCSG (12 weeks' custody).

#### *Criminal damage with a value exceeding £5,000*

6.16 For the more serious offence of criminal damage with a value exceeding £5,000, existing guidance in the MCSG suggests a starting point of 12 weeks' custody (with a range of 6 to 26 weeks' custody) for offences where the value of the damage caused was between £5,000 and £10,000. For cases where the value was over £10,000 the guidance advises committing the offender to the Crown Court to be sentenced. The statutory maximum sentence for this offence is 6 months' custody if tried summarily, or 10 years' custody if tried on indictment.

6.17 The new guideline for criminal damage with a value exceeding £5,000 is based on three levels of culpability and three levels of harm, and covers a range of disposal types; from discharge to 4 years' custody. The ACSL for those sentenced to immediate

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<sup>13</sup> Sentencers recorded whether the damage caused was 'Minor damage', 'Moderate damage', 'Significant damage up to £5,000', 'Damage between £5,000 and £10,000', or 'Damage over £10,000' (the levels of offence seriousness in the MCSG). Information on the exact value of the damage caused was not collected.

<sup>14</sup> Figures have been rounded to the nearest 1,000 offenders.

<sup>15</sup> Fine levels for individuals are based on weekly income. A Band B fine has a starting point of 100% of relevant weekly income (with a range from 75-125%), whereas a Band A fine has a starting point of 50% of relevant weekly income (with a range from 25-75%). A Band B fine is therefore higher than a Band A fine.

custody in 2017 was nine months, and over the last decade just one offender received a custodial sentence of over 3 years (after any reduction for guilty plea).

6.18 As with the offence of criminal damage with a value not exceeding £5,000, the consultation stage resource assessment noted a potential risk relating to the category 1 harm factor 'High value of damage or damaged items of great sentimental value' in the draft guideline. However, in a similar way as for criminal damage with a value not exceeding £5,000, this factor has been moved from step one to step two of the guideline, and therefore it is expected that the risk of sentence inflation has been removed.

6.19 After further consideration of the sentence levels in this guideline, the Council has reduced the top of the sentence ranges in C1, B2 and A3 for this offence; these are now aligned with those for threats to destroy or damage property (which has the same statutory maximum). Given that the starting points in these categories have not changed, it is not anticipated that these amendments specifically will result in any notable changes to sentence levels.

6.20 As the format of the new guideline differs quite substantially from the existing guidance in the MCSG, it is likely that there will be some changes to sentences under the new guideline. In particular, given that six of the nine boxes in the new guideline contain non-custodial starting points (whereas the MCSG suggests either a custodial starting point or the option to commit the offender to the Crown Court), it is possible that sentencing practice may change following the introduction of the guideline, with perhaps fewer offenders having a custodial starting point. However, it is important to bear in mind that over half of offenders sentenced in 2017 received non-custodial sentences for this offence, and in addition, for three of the six boxes with a non-custodial starting point, custody is still an option as it is included within the category range.

6.21 The majority of offenders sentenced for criminal damage with a value exceeding £5,000 are sentenced in magistrates' courts (72 per cent in 2017), and consequently there is a lack of data available on the seriousness of current cases.<sup>16</sup> Although the data collection carried out in magistrates' courts included criminal damage offences, only a very small number of records related specifically to offences where the value of the damage caused was over £5,000 (fewer than 10 cases out of around 680). It is therefore not known how many cases will fall within each category of the new guideline, and

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<sup>16</sup> Transcripts of sentencing remarks are available for cases sentenced in the Crown Court, but not for those sentenced in magistrates' courts.

consequently it is not possible to estimate the potential resource impact of the new guideline on prison and probation resources.

*Racially or religiously aggravated criminal damage*

6.22 Racially or religiously aggravated criminal damage has a statutory maximum sentence of 6 months' custody if tried summarily, or 14 years' custody if tried on indictment. The MCSG includes some general guidance regarding racial or religious aggravation and suggests an approach to sentencing for these offences.

6.23 The offence of racially or religiously aggravated criminal damage is covered within the new guidelines for criminal damage with a value not exceeding £5,000/ exceeding £5,000, but with additional provisions for the elements of aggravation.

6.24 Sentencers are first asked to sentence the basic criminal damage offence, and then increase the sentence considering the level of racial or religious aggravation involved. This is a similar process to that used within the existing MCSG criminal damage guideline, but as no previous guideline was available for use in the Crown Court, the new guideline is more prescriptive for the more serious offences.

6.25 The majority of racially or religiously aggravated criminal damage offences are sentenced in magistrates' courts (92 per cent in 2017), and consequently, as with offences of criminal damage with a value exceeding £5,000, there is a lack of data available on the seriousness of current cases.<sup>17</sup> Although the data collection carried out in magistrates' courts included criminal damage offences, only a very small number of records related specifically to racially or religiously aggravated offences (fewer than 10 cases out of around 680).

6.26 During the guideline consultation stage, research was carried out with magistrates to assess how the guideline for criminal damage with a value not exceeding £5,000 would be used in practice to sentence racially or religiously aggravated offences.<sup>18</sup> The research highlighted a potential issue with distress; specifically, a risk of double-counting as distress is considered at harm in step one (when sentencing the basic offence), and there is also a factor relating to distress within the aggravated offence. Although there remains a risk that the guideline may result in slightly higher

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<sup>17</sup> Transcripts of sentencing remarks are available for cases sentenced in the Crown Court, but not for those sentenced in magistrates' courts.

<sup>18</sup> This research also covered two racially or religiously aggravated public order offences.

sentences for these offences if distress is double-counted, the risk has been mitigated by including additional clarification for sentencers within the guideline.

6.27 Due to the lack of data available for these offences, it is not possible to say whether the new guideline will result in any changes to sentencing for these offences (although the intention is to maintain current sentencing practice). However, given that this is a fairly low volume offence, with fewer than 20 offenders sentenced to immediate custody each year since 2014<sup>19</sup> (and for those sentenced to immediate custody in 2017 the estimated pre-guilty plea sentence length was three months), any effects of the guideline on prison resources are likely to be minimal.

**Criminal damage/arson with intent to endanger life or reckless as to whether life endangered<sup>20</sup>**

6.28 There are no existing guidelines for this offence. The new guideline has three levels of harm and two levels of culpability; culpability A is for cases where the offender intended to endanger life, and culpability B is for cases where the offender was reckless as to whether life was endangered.

6.29 The sentencing range for these offences has been set with current sentencing practice in mind, spanning from a high level community order to 12 years' custody. The ACSL in 2015 was 2 years 7 months for criminal damage endangering life and 3 years 2 months for the arson equivalent. The custodial sentence ranges in the new guideline have been based on the custodial sentence lengths received by the vast majority of offenders.

6.30 There are nonetheless a small number of offenders who receive an estimated pre-guilty plea custodial sentence of more than 12 years' custody each year (the top of the offence range in the guideline).<sup>21</sup> The guideline allows for this with the inclusion of a text box above the sentence range table, advising sentencers that in exceptional cases within category 1A (which only includes intent cases), sentences above 12 years may be appropriate. This is intended to capture only those cases which are of utmost

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<sup>19</sup> Statistics on the prison population published by the Ministry of Justice (MoJ) show that as at 30 June 2018, fewer than five offenders were serving a prison sentence for racially or religiously aggravated criminal damage (source: 'Annual Prison Population: 2018' tables, published as part of MoJ's 'Offender Management Statistics quarterly' publication).

<sup>20</sup> Due to a data issue, figures for these offences are not included for 2016 and 2017.

<sup>21</sup> This may also include arson recklessly endangering life offences with a sentence of over 12 years' custody, as intent/reckless offences are grouped together in the latest data available.

seriousness; i.e. those offenders who currently receive long sentences for these offences.

6.31 There are also a handful of offenders (fewer than five) who receive the statutory maximum sentence of life imprisonment each year. As life sentences are only imposed on those offenders who meet the criteria for dangerousness (covered in step five of the guideline), the number of life sentences imposed is not expected to change under the new guideline.

6.32 After further consideration of sentence levels during the guideline consultation, the Council has increased the top of the range in A3, however it is not expected that this specific change will have any notable impact on sentence levels, as the starting point for A3 remains unchanged at 2 years.

6.33 Sentencing data show that in recent years, arson endangering life offences have generally received slightly higher sentence lengths than the criminal damage equivalent. As both of these offences are now covered within the same guideline, there is a risk that sentence lengths for criminal damage endangering life offences may increase slightly. However, there are some aggravating factors in step two of the guideline which are applicable only for arson offences (such as 'use of accelerant', 'fire set in or near a public amenity'), so although these offences now have the same starting point, it is likely that final sentences for arson endangering life offences (i.e. after any aggravation, mitigation and reduction for guilty plea) will remain slightly higher than their criminal damage counterpart.

6.34 Research undertaken with sentencers on these offences during the consultation stage did not identify any issues with the fact that both offences are now covered within the same guideline (although due to the small sample size these findings are tentative). Overall, as criminal damage endangering life is a low volume offence (with fewer than 30 offenders sentenced in 2015), and taking into account the fact that sentences between the two offences are broadly similar, the impact of having both offences within the same guideline is likely to be negligible.

6.35 Transcripts of judges' sentencing remarks for arson endangering life cases were used to assess how sentences might change under the new guideline. The majority of cases related to arson recklessly endangering life, and the analysis found that some sentences would be likely to increase under the new guideline, some would be likely to decrease, and some would remain the same. The lack of a clear pattern indicates there is currently some variation in sentencing for these offences (which is to be expected

given there is currently no guideline). Due to a lack of data available it is not possible to say whether the guideline for these offences will have an impact on prison and probation resources. It is anticipated, however, that sentencing will become more consistent following the introduction of the new guideline.

### **Threats to destroy or damage property**

6.36 There is currently no guideline for the offence of threats to destroy or damage property. The new guideline has three levels of culpability and three levels of harm, with a sentencing range from discharge to four years' custody. The statutory maximum sentence for this offence is six months' custody when tried summarily, or 10 years' custody when tried on indictment.

6.37 After further consideration of the sentence levels in this guideline, and feedback received during the guideline consultation, the Council has lowered the top of some of the sentence ranges for this offence; these are now aligned with those for criminal damage with a value exceeding £5,000 (which has the same statutory maximum). It is not expected that these specific changes will have any notable impact on sentence levels, as the starting points remain the same as those in the consultation version, which was designed to reflect current sentencing practice.

6.38 Due to a lack of data available regarding the current categorisation of seriousness for these offences, it is difficult to ascertain whether the guideline will have an impact on prison and probation resources. Given the current lack of guidance it is anticipated, however, that sentencing for these offences will become more consistent under the new guideline.

## **7 RISKS**

7.1 Two main risks have been identified:

### **Risk 1: The Council's assessment of current sentencing practice is inaccurate**

7.2 An important input into developing sentencing guidelines is an assessment of current sentencing practice. The Council uses this assessment as a basis to consider whether current sentencing levels are appropriate or whether any changes should be made. Inaccuracies in the Council's assessment could cause unintended changes in sentencing practice when the new guideline comes into effect.

7.3 This risk has been mitigated by information that was gathered by the Council as part of the guideline development and consultation phase. This included providing case

scenarios as part of the consultation exercise which were intended to test whether the guideline had the intended effect and inviting views on the guideline. Case scenarios were also provided to sentencers to test their understanding and use of the guideline. However, there are limitations on the number of factual scenarios which can be explored, so the risk has not been fully eliminated.

7.4 The risk was also mitigated for some of the offences by the collection and analysis of sentencing information from magistrates' courts. By comparing sentence outcomes to those that may result from the new guideline, it was possible to detect and amend problematic areas of the new guideline.

## **Risk 2: Sentencers do not interpret the new guidelines as intended**

7.5 If sentencers do not interpret the guidelines as intended, this could cause a change in the average (mean) severity of sentencing, with associated resource effects.

7.6 The Council takes a number of precautions in issuing new guidelines to try to ensure that judges interpret them as intended. Sentencing ranges are agreed on by considering sentencing data in conjunction with Council members' experience of sentencing. Transcripts of Crown Court sentencing remarks for arson and criminal damage cases have also been studied to ensure that the guidelines are developed with current sentencing practice in mind. Research with sentencers carried out during the consultation period has also enabled issues with implementation to be identified and addressed prior to the publication of the definitive guideline.

7.7 The Council also uses data from the Ministry of Justice to monitor the effects of its guidelines to ensure any divergence from its aims is identified as quickly as possible.

7.8 As stated earlier, the Sentencing Council conducted a data collection exercise in a sample<sup>22</sup> of magistrates' courts across England and Wales, from November 2017 until March 2018. Data collected from magistrates' courts as part of this exercise have provided an indication of sentencing practice for criminal damage offences prior to the new guideline coming into effect. A similar exercise is planned for 2019/20, to collect data once the guideline is in place. This will help the Council to monitor the impact of specific guidelines, compare sentencing practice before and after the guideline comes into force, and ensure any divergence from its aims is identified and rectified.

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<sup>22</sup> In total, 80 magistrates' courts were selected to take part in the exercise, based on the volume of offenders sentenced in those courts over the same period the previous year.