

## Consultation Stage 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 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 is proposing 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;
- Criminal damage with a value not exceeding £5,000;

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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 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 vast 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 sentencing transcripts 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 has helped the Council to create a guideline that should maintain current sentencing practice.

4.4 During the consultation stage, some small-scale research will be conducted with a group of sentencers, to check that the draft guideline would work as anticipated. This research should also provide some further understanding of the likely impact of the guideline on sentencing practice, and the subsequent effect on the prison population.

4.5 Detailed sentencing statistics for arson and criminal damage offences covered by the draft 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**

4.6 In 2016, around 480 adult offenders were sentenced for arson offences.<sup>2</sup> Immediate custody was the most common sentencing outcome, with 41 per cent of offenders sentenced to immediate custody in 2016. The average (mean) custodial sentence length (ACSL) in 2016 was 1 year 9 months.

## **Criminal damage under £5,000, criminal damage over £5,000, racially or religiously aggravated criminal damage<sup>3</sup>**

4.7 Criminal damage under £5,000 is the highest volume offence covered by the guideline, with around 20,900 adult offenders sentenced in 2016. The majority of offenders sentenced received either a discharge (30 per cent), a fine (26 per cent), or a community order (25 per cent). Only six per cent of offenders were sentenced to immediate custody in 2016, with an ACSL of one month.

4.8 The number of offenders sentenced for criminal damage over £5,000 increased in 2016 compared with previous years, from 280 in 2015 to 330 in 2016. Around 19 per cent of offenders were sentenced to immediate custody in 2016, and the ACSL was seven months.

4.9 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 2016. Almost half of offenders sentenced received a community order, and 10 per cent were sentenced to immediate custody. The ACSL for these offences in 2016 was four months.

## **Criminal damage/arson with intent to endanger life, or reckless as to whether life endangered<sup>4</sup>**

4.10 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.

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<sup>2</sup> The Court Proceedings Database (CPD), maintained by the Ministry of Justice (MoJ), is the data source for these statistics. Data on average custodial sentence lengths presented in this resource assessment are those after any reduction for guilty plea. Further information about this sentencing data can be found in the accompanying statistical bulletin and tables published here: <http://www.sentencingcouncil.org.uk/publications/?s&cat=statistical-bulletin>

<sup>3</sup> Figures presented here exclude criminal damage where the value was not known (around 490 offenders in 2016).

<sup>4</sup> Due to a data issue, figures for these offences are not presented for 2016.

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

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

4.12 Around 510 offenders were sentenced for threats to destroy or damage property in 2016. Just under a quarter of offenders received a community order and 19 per cent were sentenced to immediate custody. The ACSL in 2016 was five months.

## **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, some important 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 proposed 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 guidelines is measured in terms of the change in sentencing practice that is expected to occur as a result of them. Any future changes in sentencing practice which are unrelated to the publication of the new guidelines are therefore not included in the estimates.

5.4 In developing sentence levels for the different guidelines, existing guidance and data on current sentence levels has been considered.

5.5 While data exists 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 guidelines, 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 It therefore remains difficult to estimate with any precision the impact the guideline may have on prison and probation resources. To support the development of the guideline and mitigate the risk of the guideline having an unintended impact, interviews will be undertaken with sentencers during the consultation period, which will provide more information on which to base the final resource assessment accompanying the definitive guideline.

## **6 RESOURCE IMPACTS**

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

### **Summary**

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

6.3 Consequently, no impact on prison or probation services is anticipated as a result of the guideline.

6.4 Further research will be conducted during the consultation stage, and this should help to provide a clearer estimate of the impact for the final resource assessment, to accompany the definitive guideline.

### **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 proposed new guideline is for use at all courts and is therefore more comprehensive for sentencing the most serious offences.

6.6 The draft 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.

6.7 The statutory maximum sentence for arson offences is life imprisonment, and in 2016 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 proposed 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 Over the last decade around 10 offenders received sentences of more than 8 years' custody (the top of the offence range in the proposed new guideline). 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 As the proposed sentencing ranges have been set with current sentencing practice in mind, it is not anticipated that there will be any impact on prison and probation resources.

#### **Criminal damage under £5,000, criminal damage over £5,000, racially or religiously aggravated criminal damage**

6.10 The existing guideline for criminal damage in the MCSG covers the offences of criminal damage under £5,000, criminal damage over £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.

6.11 The proposed new guideline for criminal damage under £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).

6.12 Criminal damage under £5,000 is the highest volume offence covered by the guideline, with over 20,000 adult offenders sentenced every year. Any unintended impact of this guideline therefore has the potential to affect a large number of offenders.

6.13 For this offence, no data is currently available to indicate the proportion of offenders placed in different levels of seriousness, which are categorised as either 'minor', 'moderate' or 'significant' damage. There is potentially a risk that more offenders may be placed in the highest category of seriousness under the draft guideline, due to the inclusion of the category 1 harm factor 'High value of damage or damaged items of great sentimental value'. Sentimental value was included within this harm factor as

research with sentencers during the guideline's development highlighted the importance of considering more than just the financial value of items damaged, and the Council felt that the guideline should better reflect the wider impact these offences could have on victims.

6.14 However, as the sentencing range for category 1 offences in the draft guideline encompasses the full range of sentence outcomes for this offence; from a discharge at the bottom of the range in C1, up to three months' custody at the top of the range in A1, along with the fact that custody is included in only one of the six categories for this offence (A1), it is not anticipated that the draft guideline will result in any impact on prison or probation resources for this offence.

6.15 For the more serious offence of criminal damage over £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 criminal damage over £5,000 is 6 months' custody if tried summarily, or 10 years' custody if tried on indictment.

6.16 The draft guideline for criminal damage over £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. Sentencing data for this offence shows that the majority of offenders sentenced receive non-custodial sentences. The ACSL for those sentenced to immediate custody in 2016 was 7 months, and over the last decade the maximum custodial sentence given was 3 years (after any reduction for guilty plea).

6.17 As with criminal damage under £5,000, the draft guideline for criminal damage over £5,000 also includes the category 1 harm factor 'High value of damage or damaged items of great sentimental value'. This differs from the categorisation of seriousness in the existing MCSG for these offences, in which the levels of seriousness are described purely in monetary terms. However, as category 1 in the draft guideline covers a range of sentence outcomes; from a community order in C1 to 4 years' custody in A1, sentencers still have a range of sentencing options available to them.

6.18 Additionally, there is no evidence to suggest that the impact on the victim is not already being taken into account by sentencers, and also the item damaged must be of **great** sentimental value for this factor to apply. At this stage, the Council does not expect

that this factor will lead to any changes in average sentencing practice or that there will be any impact on prison or probation services.

6.19 Nevertheless, in order more accurately to assess the potential impact of this factor on sentencing for these offences, more detailed knowledge of current sentencing practice will be needed. The Sentencing Council is currently conducting a data collection exercise in a sample<sup>5</sup> of magistrates' courts across England and Wales, running from the beginning of November 2017 to the end of March 2018. As part of this exercise, sentencers are being asked to give details of the sentencing factors they have taken into account and the final sentence they have imposed each time they sentence an adult<sup>6</sup> for one of a list of offences. This includes the offences of criminal damage under £5,000, over £5,000 and where the offence was racially/ religiously aggravated, amongst others.<sup>7</sup> Data collected from magistrates' courts as part of this exercise will provide a clearer understanding of the factors currently taken into account by sentencers for criminal damage offences. Further work will also be carried out during the guideline consultation to investigate whether this factor will result in any impact on resources.

6.20 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.

6.21 The offence of racially or religiously aggravated criminal damage is covered within the proposed new guidelines for criminal damage under £5,000 and over £5,000, but with additional provisions for the elements of aggravation.

6.22 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 proposed new guideline is more prescriptive for the more serious offences.

6.23 The guideline has been set with current sentencing practice in mind, and so in general there is not expected to be any impact on prison or probation resources.

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<sup>5</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>6</sup> Offenders aged 18 and over only.

<sup>7</sup> The data collection also includes 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/arson with intent to endanger life or recklessly endangering life<sup>8</sup>**

6.24 There are no existing guidelines for this offence. The proposed 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.

6.25 The proposed 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 proposed new guideline have been set based on the custodial sentence lengths received by the vast majority of offenders.

6.26 There are nonetheless a small number of offenders who received a custodial sentence of more than 12 years' custody over the last decade (the top of the offence range in the draft guideline). 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, sentences above 12 years may be appropriate. This is intended to capture only those cases which are of utmost seriousness; i.e. those offenders who currently receive long sentences for these offences.

6.27 There are also a handful of offenders 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 six of the guideline), the number of life sentences imposed is not expected to change under the new guideline.

6.28 Sentencing data shows that over the last few 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 draft 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. In addition, as criminal damage

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<sup>8</sup> Due to a data issue, figures for these offences are not presented for 2016.

endangering life is a low volume offence (with fewer than 30 offenders sentenced each year), and taking into account the fact that sentences between the two offences are broadly similar, the impact of the draft guideline on prison and probation resources is likely to be negligible.

6.29 To mitigate this risk, research with sentencers will be conducted during the guideline consultation stage, in order to gain a clearer estimate of the impact of the guideline on sentencing practice for these offences.

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

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

6.31 As with the other draft guidelines, the sentence ranges in this guideline reflect current sentencing practice. No impact on prison and probation resources is therefore anticipated.

## **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 is mitigated by information that is gathered by the Council as part of the guideline development and consultation phase. This includes providing case scenarios as part of the consultation exercise which are intended to test whether the guideline has the intended effect and inviting views on the guideline. However, there are limitations on the number of factual scenarios which can be explored, so the risk cannot be fully eliminated.

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

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

7.5 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 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 should also enable issues with implementation to be identified and addressed prior to the publication of the definitive guideline.

7.6 Following the release of the guidelines, explanatory material will be provided to read alongside the guidelines; consultees can also feed back their views of the likely effect of the guidelines, and whether this differs from the effects set out in the consultation stage resource assessment. The Council also uses data from the Ministry of Justice to monitor the effects of its guidelines.

7.7 As stated earlier, the Sentencing Council is currently running a data collection exercise in a sample<sup>9</sup> of magistrates' courts across England and Wales, until the end of March 2018. As part of this exercise, sentencers are being asked to give details of the sentencing factors they have taken into account and the final sentence they have imposed each time they sentence an adult<sup>10</sup> for one of a list of offences.<sup>11</sup>

7.8 Data collected from magistrates' courts as part of this exercise will give an indication of sentencing practice for criminal damage offences before the guideline is in 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 the guideline, 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>9</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>10</sup> Offenders aged 18 and over only.

<sup>11</sup> The data collection includes the following offences: criminal damage under £5,000, and over £5,000; racially or religiously aggravated criminal damage; 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.