

Consultation Stage Resource Assessment

Kidnap, false imprisonment and blackmail offences

Introduction

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 ([s127 Coroners and Justice Act 2009](#)).

Scope

The guidelines for kidnap, false imprisonment and blackmail apply only to adults. This assessment therefore considers the resource impact of the draft guidelines on prison and probation service resources. Any resource impacts which may fall elsewhere are therefore not included in this assessment.

This resource assessment covers the following offences:

- Kidnap, a common law offence
- False imprisonment, a common law offence
- Blackmail, Theft Act 1968 (section 21)

There is a single combined guideline covering the offences of kidnap and false imprisonment. The statistics are provided separately for each of these offences in the 'Current sentencing practice' section.

The data presented in this resource assessment only include cases where the specified offence was the principal offence committed. For more details see the 'Further information' section at the end of this document.

Rationale and objectives for new guideline

There have previously been no guidelines for the offences of kidnap or false imprisonment, which are offences under common law. There is also currently no existing guideline for blackmail.

The development of guidelines for these offences is in accordance with the Council's aim to develop guidelines where they are absent to improve consistency in sentencing and provide guidance for sentencers.

The intention is that the new guidelines will encourage consistency of sentencing and in the vast majority of cases will not change overall sentencing practice. For blackmail, the new guideline may increase sentencing severity for the most serious cases, given the changing nature and the seriousness of the offences coming before the courts. For kidnap and false imprisonment, the guideline has been developed with a view to ensure sentences are proportionate to the seriousness of the offending.

The Council is consulting on new sentencing guidelines for these offences, for use in all courts in England and Wales.

Current sentencing practice

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

Sources of evidence have included the analysis of transcripts of Crown Court judges' sentencing remarks, references to case law, relevant news articles and sentencing data from the Ministry of Justice (MoJ) Court Proceedings Database. For more information on this data source please see the 'Further information' section at the end of this document. Knowledge of the sentencing starting points, ranges and factors used in previous cases has helped the Council to create guidelines that are in line with the Council's intentions.

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

Detailed sentencing statistics for the offences covered by the draft guidelines have been published on the [Sentencing Council: Statistical bulletins webpage](#).

Kidnap

In 2022, around 110 offenders were sentenced for kidnap; this is an indictable only offence and can only be sentenced at the Crown Court. The majority of offenders were sentenced to immediate custody (82 per cent). A further 10 per cent were 'Otherwise dealt with' (see the 'Further information' section for more details) and 6 per cent of offenders received a suspended sentence order. The remaining offenders received either a community order (1 per cent) or a discharge (1 per cent).

For those sentenced to immediate custody in 2022, the average (mean) custodial sentence length (ACSL) was 5 years 9 months, after any reductions for guilty plea, with 82 per cent receiving a sentence post guilty plea of up to and including 8 years. The statutory maximum sentence for this offence is life imprisonment.

False imprisonment

Around 110 offenders were sentenced for false imprisonment in 2022, which is broadly consistent with the number of offenders sentenced over the previous 5 years. This is an indictable only offence and can only be sentenced at the Crown Court. The majority of offenders (82 per cent) received immediate custody. A further 7 per cent were 'Otherwise dealt with', and 6 per cent received a suspended sentence order. The remaining offenders received a community order (4 per cent) or a discharge (1 per cent).

For those sentenced to immediate custody in 2022, the average (mean) custodial sentence length (ACSL) was 4 years 6 months, after any reductions for guilty plea, with just over three quarters (77 per cent) receiving a sentence of up to and including 6 years. The statutory maximum sentence for this offence is life imprisonment.

Blackmail

In 2022, around 140 offenders were sentenced for blackmail. This is an indictable only offence and can only be sentenced at the Crown Court. Most offenders sentenced for blackmail receive a custodial sentence. Around 73 per cent of offenders were given an immediate custodial sentence and 24 per cent were given a suspended sentence order. A further 1 per cent of offenders received a community order and the remaining 2 per cent were 'Otherwise dealt with'.

The statutory maximum sentence for this offence is 14 years' custody. For those sentenced to immediate custody, the average (mean) custodial sentence length in 2022 was 2 years 10 months, after any reductions for guilty plea. This is broadly consistent with previous years. Around 95 per cent of offenders sentenced to immediate custody received a sentence length of up to and including 6 years.

Key assumptions

To estimate the resource effect of new guidelines, an assessment is required of how they will affect aggregate sentencing behaviour. This assessment is based on the objectives of the new guidelines, and draws upon analytical and research work undertaken during guideline development. However, some 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 guidelines are therefore subject to a substantial degree of uncertainty.

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 guidelines.

The resource impact of the draft 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 draft guidelines are therefore not included in the estimates.

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

It therefore remains difficult to estimate with any precision the impact the guidelines may have on prison and probation resources. To support the development of the guidelines and mitigate the risk of the guidelines having an unintended impact, research 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 guidelines.

Resource impacts

This section should be read in conjunction with the draft guidelines available on the [Sentencing Council consultation webpage](#).

Overall impacts

Overall, the kidnap and false imprisonment combined guideline is anticipated to increase custodial sentence lengths for these offences and may therefore result in a total requirement of around 80 additional prison places (around 20 prison places for kidnap, and around 60 for false imprisonment).

For blackmail, it is also anticipated that sentence lengths imposed will increase under the draft guideline. The guideline is estimated to result in a total requirement of around 50 additional prison places.

Kidnap and false imprisonment

There is currently no guideline for the offences of kidnap or false imprisonment. The draft guideline is a combined guideline covering both of these offences, consisting of three levels of culpability and three levels of harm. The sentencing ranges have been set with a view to ensure they are proportionate to the seriousness of the offending. The sentencing table in the draft guideline ranges from 6 months' custody to 16 years' custody.

Given that the sentence ranges in the draft guideline are entirely custodial, it is expected that any offenders who currently receive a sentence of a discharge, fine or community order would receive a custodial sentence under the draft guideline. However, this only affects a small proportion of offenders, with only 2 per cent of offenders in 2022 receiving a discharge or community order for kidnapping, and 5 per cent for false imprisonment.

A small proportion of offenders receive suspended sentence orders each year, with this figure at 6 per cent in 2022 for kidnap and 6 per cent for false imprisonment. Suspended sentence orders remain possible under the draft guideline, with the sentencing table including three categories for which the starting point is eligible for suspension (sentencers are able to suspend sentences of between 14 days and two years).

Analysis of a sample of Crown Court judges' sentencing remarks was undertaken to understand the possible effects of the guideline on sentencing practice. As kidnap and false imprisonment are both indictable only offences, they are sentenced at the Crown Court. The transcript sample reflects a range of sentencing outcomes but is not necessarily representative of all cases.

Based on an analysis of 18 transcripts from 2021 for the offence of kidnap, it is estimated that the draft guideline is likely to result in a modest uplift in sentences. The ACSL based on the sample of transcripts was 5 years; analysis indicated a possible increase to 5 years 5 months under the draft guideline (after any reductions for guilty plea). Therefore, the transcript analysis suggests a potential increase in ACSL of 5 months under the draft guideline. As a result, it is estimated that the draft guideline may lead to a requirement for around 20 additional prison places for the offence of kidnap.

Analysis of 22 transcripts from 2021 was also undertaken for the offence of false imprisonment. This estimated that the draft guideline would increase the severity of custodial sentences. It was estimated that there would be a potential increase in the ACSL of around 1 year 2 months under the draft guideline, with the ACSL of the transcript sample increasing from 3 years 9 months to 5 years, after any reductions for guilty plea. Therefore, for the offence of false imprisonment the draft guideline may result in a requirement for around 60 additional prison places.

Blackmail

There is currently no guideline for blackmail. The new guideline has three levels of culpability and three levels of harm. The sentencing table in the draft guideline ranges from a community order to 12 years' custody.

The sentence ranges have been set to ensure that the appropriate sentences can be imposed for the most serious cases. The sentence ranges have been developed to ensure that sentencing can reflect the seriousness of the types of cases seen more recently in the courts where a very serious level of harm or distress is caused to the victim. Additionally, there are new elements to account for in sentencing blackmail offences (for example, due to the use of technology) and so the nature of offences may have changed from what was seen previously. Therefore, it is intended that the sentences imposed under the guideline will be proportionate to the nature and seriousness of the offence committed.

All starting points in the sentencing table are custodial and this is largely in line with current sentencing practice. In 2022, around 96 per cent of offenders received a custodial sentence (either suspended or immediate).

Analysis of a sample of Crown Court judges' sentencing remarks has been undertaken to understand the possible effects of the guideline on sentencing practice

(a total of 16 transcripts from 2020 were analysed). Blackmail is an indictable only offence and is therefore sentenced at the Crown Court. The transcript sample reflects a range of sentencing outcomes but is not necessarily representative of all cases.

Based on the transcript analysis, it is expected that the draft guideline will lead to an uplift in sentences. This is due to a potential increase in the ACSL of the transcript sample by around 7 months (from 3 years 3 months to 3 years 10 months).

Additionally, the transcript analysis suggested that some offenders currently receiving a suspended sentence would instead receive an immediate custodial sentence under the draft guideline, as the length of the custodial sentence imposed would exceed the 2 year threshold. Therefore, it is estimated that the draft guideline may result in a requirement of around 50 additional prison places for blackmail.

Risks

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

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.

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 guidelines have the intended effect and inviting views on the guidelines. 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

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

The Council takes a number of precautions in issuing new guidelines to try to ensure that sentencers 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 kidnap, false imprisonment and blackmail 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 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 this consultation stage resource assessment. 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.

Further information

Data sources and quality

The Court Proceedings Database (CPD), maintained by the Ministry of Justice (MoJ), is the data source for these statistics. Every effort is made by MoJ and the Sentencing Council to ensure that the figures presented in this publication are accurate and complete. However, it is important to note that these data have been extracted from large administrative data systems generated by the courts and police forces. As a consequence, care should be taken to ensure data collection processes and their inevitable limitations are taken into account when those data are used.

Further details of the processes by which MoJ validate the records in the CPD can be found inside the 'Technical Guide to Criminal Justice Statistics' within the [Criminal Justice System Statistics Quarterly \(CJSQ\) publication](#).

The data in this report were generated using the Ministry of Justice's (MoJ) Court Proceedings Database (CPD), aligning with figures published in the Criminal Justice System statistics quarterly: December 2022 publication (CJSQ) which was originally published in May 2023. Since then, the CJSQ publication has been revised to reflect changes to the underlying data, which have not been reflected in these statistics. As such, the latest MoJ published statistics will not match the statistics in this report. Further information on changes to MoJ's data processing can be found in the [changes and revisions section](#) of the latest publication.

The data presented in this resource assessment only include cases where the specified offence was the principal offence committed. When an offender has been found guilty of two or more offences, the principal 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. Further information about these sentencing data can be found in the accompanying statistical bulletin and data tables published on the [Sentencing Council: Statistical bulletins webpage](#).

The average custodial sentence lengths (ACSLs) presented in this resource assessment are mean average custodial sentence length values for offenders sentenced to determinate custodial sentences, after any reduction for guilty plea.

'Otherwise dealt with' covers miscellaneous disposals. Please note that due to a data issue currently under investigation, there are a number of cases which are incorrectly categorised in the Court Proceedings Database (CPD) as 'Otherwise dealt with'. Therefore, these volumes and proportions should be treated with caution.

Figures presented include the time period from March 2020 in which restrictions were initially placed on the criminal justice system due to the coronavirus (COVID-19) pandemic, and the ongoing courts' recovery since. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.

Methodology

Where a resource impact has been calculated, volumes of sentences have been adjusted in line with 2022 volumes. For the offences of kidnap and false imprisonment, it has been assumed that those serving a determinate custodial sentence of less than seven years would be released half-way through their sentence and those serving a determinate sentence of seven years or more would be released after serving two thirds of their sentence. For these offences, where an extended determinate sentence was imposed, which consists of a custodial sentence length and an extended licence period, time served has been assumed to be 90 per cent of the custodial sentence length. For the offence of blackmail, it has been assumed that offenders would be released half-way through their sentence.

Data are not available to estimate how many suspended sentence orders would continue to be suspended under the guidelines, however, the estimated resource impacts provided are based on the assumption that offenders who were previously given a suspended sentence order would continue to be given one under the guideline, provided the sentence length was within the range for suspension (between 14 days and 2 years).

General conventions

Actual numbers of sentences have been rounded to the nearest 100, when more than 1,000 offenders were sentenced, and to the nearest 10 when fewer than 1,000 offenders were sentenced.

Proportions of sentencing outcomes have been rounded to the nearest integer. Percentages in this report may not appear to sum to 100 per cent, due to rounding. Prison impact estimates have been rounded to the nearest 10 prison places.