

Assessing the Impact of the Sentencing Council's Burglary Definitive Guideline on Sentencing Trends

Summary

- The burglary definitive guideline was implemented in January 2012, with the aim of regularising practice and ensuring consistency of sentencing burglary offences, rather than substantially altering it.
- For domestic burglary there has been a shift towards more severe sentences. However, this was anticipated and appears to be part of a long term trend, and therefore unlikely to be as a result of the release of the guideline.
- For non-domestic burglary offences there has also been a shift towards more severe sentences which was not anticipated. There was a steep increase in sentencing severity in mid-August 2011 which has subsequently been maintained. However, it has not been possible to establish whether this continued increase was a result of the guideline, or the impact of the riots which occurred in London and other major cities at this time, or a combination of the two. Further research is proposed.
- Aggravated burglary also saw an impact different to that anticipated, with an increase in severity in 2011. However, low volumes for this offence make it susceptible to large changes, and consequently it has not been possible to undertake further detailed analysis.

Introduction

The Sentencing Council was set up in 2010 and issues definitive guidelines for use by all members of the judiciary who sentence criminal offences. The burglary guideline, which came into force on the 16th January 2012, covers the offences of domestic burglary, non-domestic burglary and aggravated burglary.

One of the Sentencing Council's statutory duties under the Coroners and Justice Act 2009 is to monitor the operation and effect of its sentencing guidelines and to draw conclusions from this information. Analysis has therefore been undertaken to investigate the impact of the guideline on sentencing outcomes. The aim of this paper is to provide up to date sentence volumes for burglary offences and explore trends and changes in sentencing outcomes. The paper also makes recommendations for further analysis.

A resource assessment to accompany the publication of the burglary guideline was published in October 2011.¹ This was undertaken to fulfil the Council's statutory duties under s.127 of the Coroners and Justice Act 2009 to consider the likely effect of its guidelines on prison, probation and youth justice services.

In developing the guideline, the Council considered that the severity of sentencing for these offences was appropriate and proportionate and therefore the aim of the guideline was to regularise practice and ensure the consistency of sentencing rather

¹ <https://www.sentencingcouncil.org.uk/publications/item/burglary-offences-final-resource-assessment/>

than alter it. As a result the resource assessment concluded that the burglary guideline would have no impact on prison and probation services. In addition, as the guideline applies to adults only, no impact was expected on youth justice services.

Methodology

The Ministry of Justice's Court Proceedings Database has been used to produce descriptive statistics to show changes in the types of disposals being imposed for the different burglary offences and in the adjusted average custodial sentence length (ACSL)² for each offence. The aim is to assess if there are any significant changes following the introduction of the guideline and on the basis of this whether any further work is needed to explore the potential reasons for this change.

In addition, changes in the average severity of sentences have been investigated. Since sentencing outcomes comprise different sentence types and sentence lengths, a 'severity scale' has been created in order to be able to compare across different sentences and over time. The scale ranges from 0 to 100, representing the full range of sentence outcomes from a discharge (represented by 0) to 20 years' custody (represented by 100). A time series model has been used where possible³ to establish whether any observed changes in sentencing severity would have occurred if no guideline had been released.

The time series model provides a forecast range of where we would expect average severity to fall based on historic trends. Where the 'actual' severity deviates outside of this range, this may be attributable to either the guideline having caused a change in sentencing practice (this may have been anticipated in the resource assessment and been an aim of the guideline), or sentencers not implementing the guideline as expected and as anticipated in the resource assessment. In the latter case, further investigation may be required. Equally, if the resource assessment expected there to be a deviation outside of the forecast range and none occurred, this may warrant further investigation. The confidence intervals for non-domestic burglary can be interpreted in a similar way.

In August 2011 riots occurred in London and other major cities across England and Wales. Around 50 per cent of the people arrested in connection with the riots were charged with burglary offences. An attempt has been made to exclude offences related to the riots from the analysis, so they do not bias the overall results.⁴ However, it is not possible to ascertain whether all the riot cases have been removed, and therefore caution should be used when interpreting the results. In addition, it is possible that the riots influenced the general climate at the time and as a consequence may have impacted sentencing for all burglary offences.

² The average custodial sentence length (ACSL) is the average (mean) sentence length for determinate custodial sentences only. It therefore excludes indeterminate sentences (life or Imprisonment for Public Protection, IPPs). This approach for calculating ACSL is consistent with that used for sentencing statistics produced by the Ministry of Justice. Finally, the ACSLs have been adjusted using data from the Crown Court Sentencing Survey (CCSS, see footnote 9 for further details) to provide estimates of the sentence length *before* the application of a reduction for any guilty plea. These estimates allow a better assessment of the use of sentencing guidelines as the category ranges specified in the guidelines are those before any guilty plea reduction is applied.

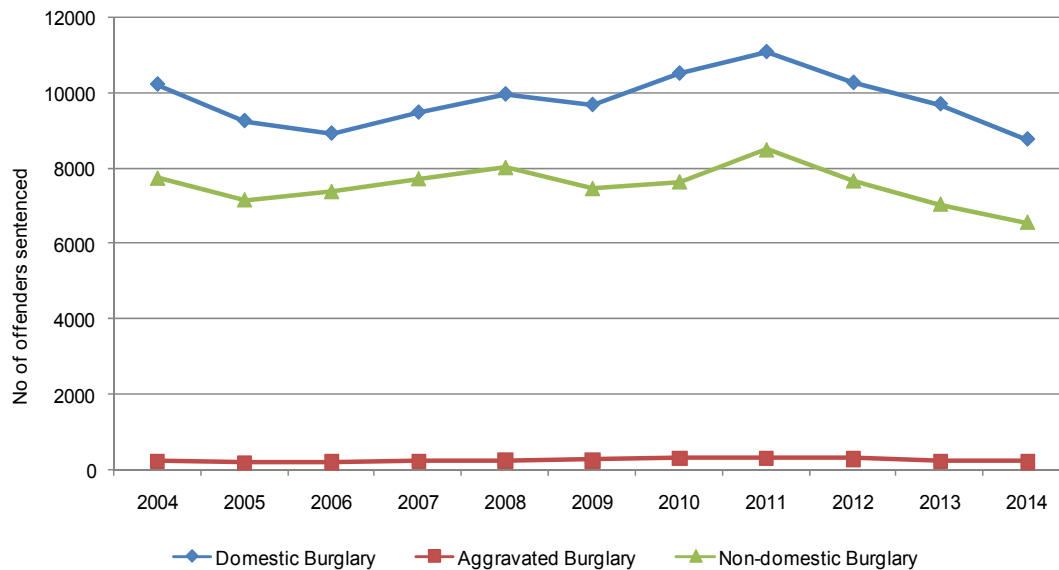
³ The non-domestic burglary model is unreliable, and therefore the confidence intervals are shown to aid interpretation while further work is undertaken. It has not been possible to produce a time series model for aggravated burglary due to the low volumes for this offence, therefore confidence intervals are presented to aid interpretation.

⁴ A dataset of riot-related cases was provided by the Ministry of Justice, and was used to filter out these cases from the Court Proceedings Database. It was possible to match around a third of identified riot cases. Therefore it is possible that some riot-related cases are still included in the analysis and may be influencing the results seen.

Findings

In total, 15,500 adult offenders were sentenced for burglary offences in 2014, making it a relatively high volume offence. The majority of these offences were domestic burglary (8,800), and non-domestic burglary (6,600). Aggravated burglary comprised only a small number of burglary offences (230).⁵ Overall, the number of adult offenders sentenced for burglary offences reached a peak in 2011 and has since been gradually declining (figure 1).

Figure 1: Number of adult offenders sentenced for burglary offences covered by the guideline, 2004-2014



In 2014, 60 per cent of offenders sentenced for burglary offences received immediate custody, 18 per cent received a suspended sentence order and 15 per cent a community order. The remainder were spread across fines, discharges or were otherwise dealt with (see figure 2).⁶

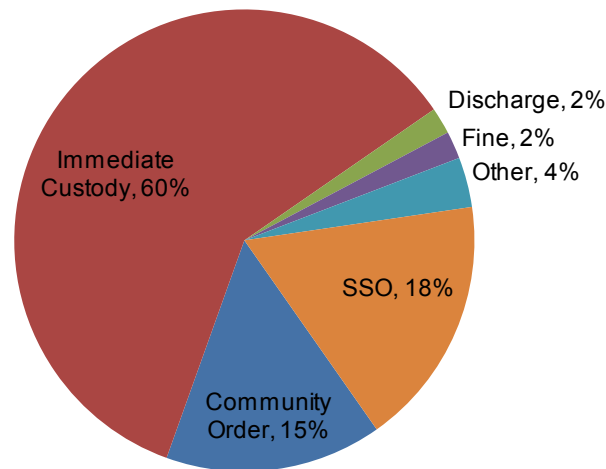
Of those receiving a custodial sentence, there has been an increase in the adjusted ACSL from 2 years and 3 months in 2010 to 2 years and 5 months in 2014. This trend in longer custodial sentences is seen across the whole Criminal Justice System (not just burglary offences).⁷

⁵ Ministry of Justice Court Proceedings Database. 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 less than 1,000 offenders were sentenced. Rounded figures may not sum to the total. The figures relate to persons for whom these offences were the principal offences for which they were dealt with. When a defendant has been found guilty of two or more offences it 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. Every effort is made to ensure that the figures presented 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.

⁶ The category 'otherwise dealt with' includes: one day in police cells; disqualification order; restraining order; confiscation order; travel restriction order; disqualification from driving; recommendation for deportation; compensation; and other miscellaneous disposals.

⁷ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/478037/criminal-justice-statistics-quarterly-june-2015.pdf (page 16)

Figure 2: Proportion of offenders sentenced for burglary offences by sentence outcome, 2014

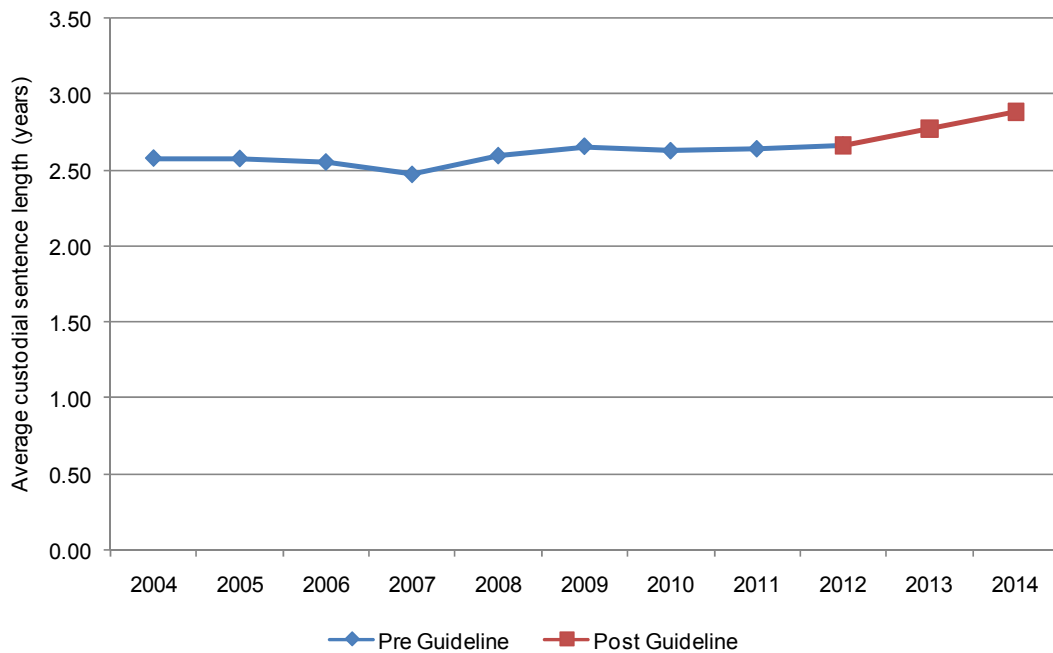


Domestic Burglary (Theft Act 1968, s.9)

The majority of offenders sentenced for domestic burglary in 2014 received an immediate custodial sentence (70 per cent). Prior to 2010 this proportion remained relatively stable (at around 60 per cent). However, over the last five years this proportion has increased, from 63 per cent in 2010 to 70 per cent in 2014. There has also been an increase in suspended sentence orders and a reduction in the proportion of offenders receiving community orders. This is also in line with that seen across the whole Criminal Justice System for all offences.

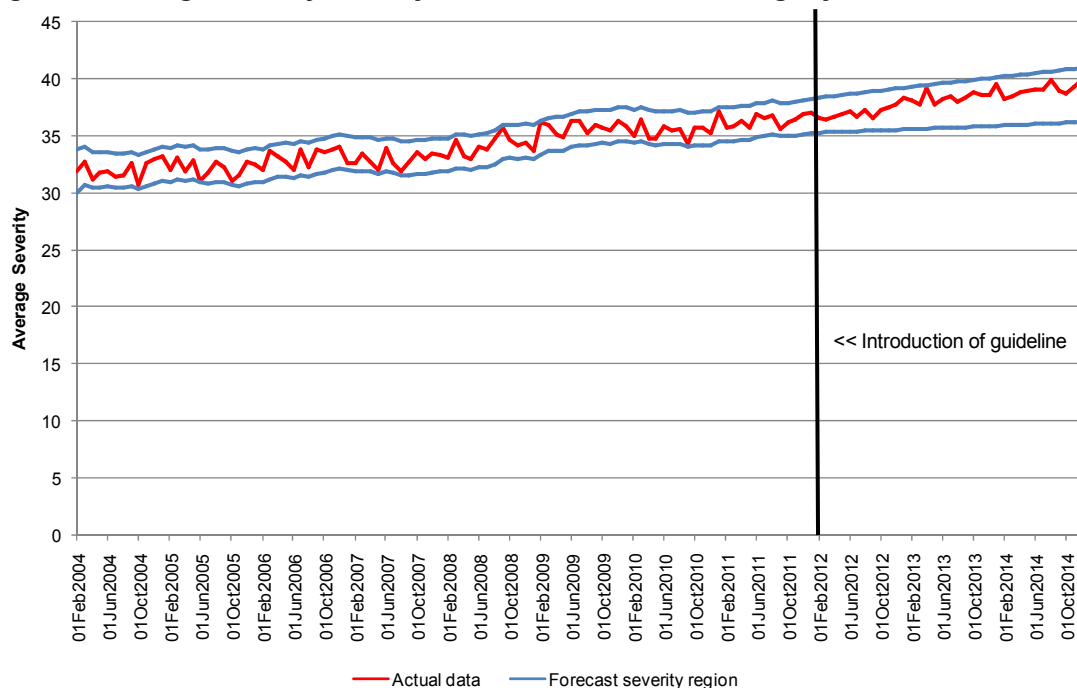
In addition to more custodial sentences being imposed, there has also been an increase in the adjusted ACSL over time. In 2010 the ACSL was 2 years and 8 months. This increased by ten per cent to 2 years and 11 months in 2014. This appears to be part of a general upward trend, rather than specifically coinciding with the release of the guideline (see figure 3).

Figure 3: Adjusted ACSL for domestic burglary, 2004-2014



In addition, figure 4 shows the average sentence severity (red line) and forecasted severity region (between the two blue lines) for domestic burglary. It shows that there has been a long term trend towards more severe sentences for this offence over time. The release of the definitive guideline does not appear to have impacted this overall pattern, confirmed by actual severity (the red line) remaining within the forecast region (the region between which we would expect sentencing to fall if historical trends in sentencing continued, marked by the blue lines). The resource assessment anticipated no change in sentencing practice, and therefore this remains in line with the anticipated result.

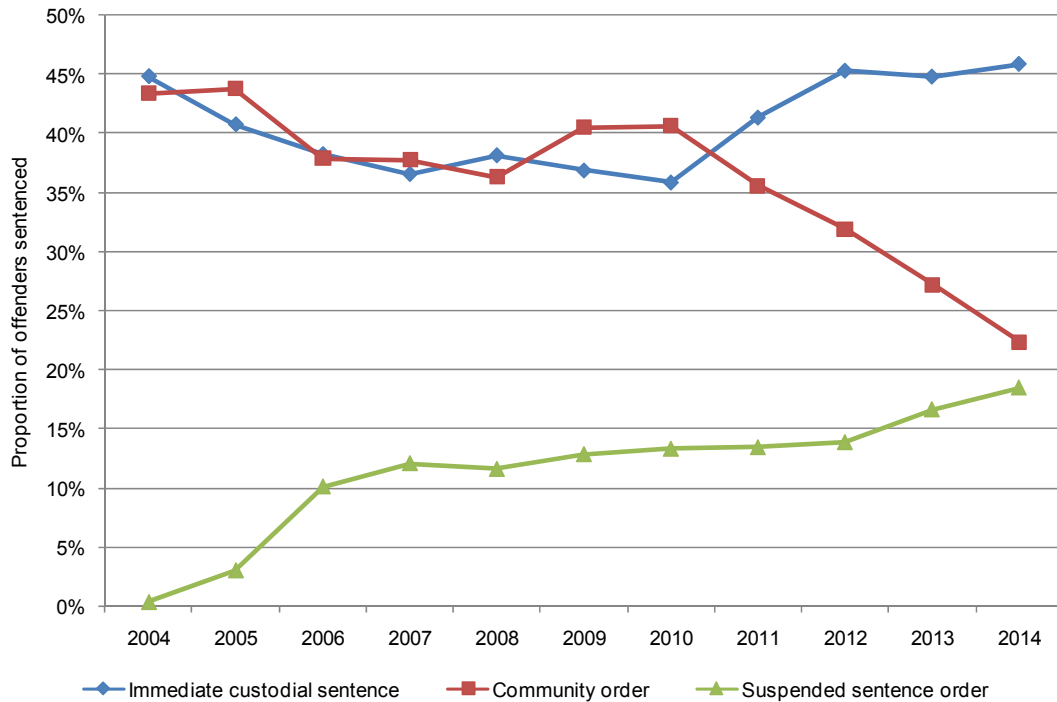
Figure 4: Average monthly severity over time for domestic burglary, 2004-2014



Non-domestic Burglary (Theft Act 1968, s.9)

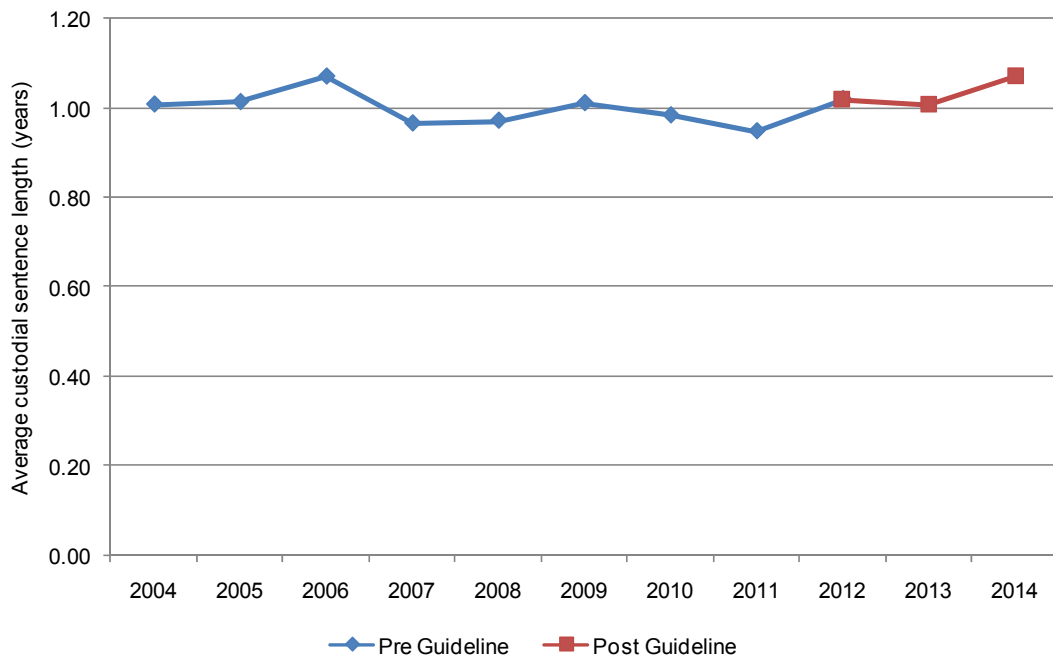
Figure 5 compares the range of sentencing outcomes for non-domestic burglary since 2004. As with domestic burglary, there has been a shift towards more severe disposal types, with an increase in immediate custody (46 per cent in 2014) and suspended sentence orders (18 per cent in 2014) and a substantial decline in the proportion of offenders receiving community orders (down to 22 per cent in 2014). This has been particularly pronounced since 2010, where the use of immediate custody has increased by 28 per cent and community orders have decreased by 45 per cent, to 2014.

Figure 5: Sentence outcomes for non-domestic burglary, 2004-2014



Adjusted ACSL's have also varied over time, as shown in figure 6. Since 2011 there has generally been an upward trend, with a 13 per cent increase in ACSL between 2011 and 2014.

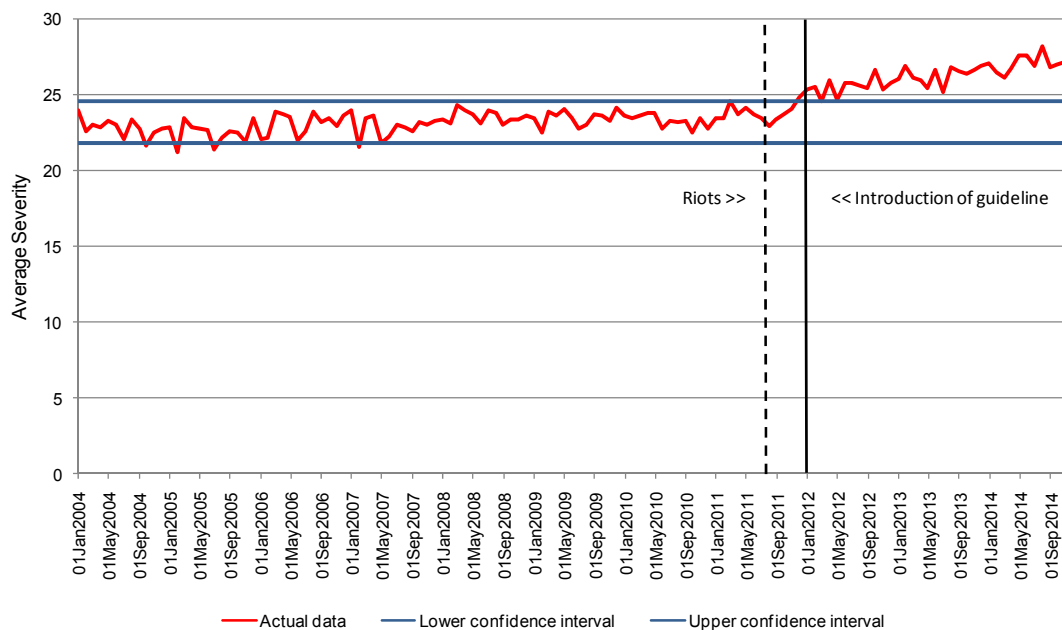
Figure 6: Adjusted ACSL for non-domestic burglary, 2004-2014



Sentencing severity has increased substantially over time for non-domestic burglary. Figure 7 shows where we would expect sentencing severity to be had there been no change in sentencing practice over and above normal historical fluctuations (the blue lines). As can be seen, the actual increase in severity was in excess of what would be expected based on historical trends, and does indicate there has been a change contrary to the resource assessment which anticipated no change in disposal types or length.

It is not possible to say whether this is related to the guideline, as severity first started rising five months before the definitive guideline was published. The dashed black line shows when the riots occurred in August 2011, and as can be seen sentence severity started increasing around this time. However, it is not possible – without further research – to confirm which factor was the major influence on sentencing.

Figure 7: Average monthly severity over time for non-domestic burglary, 2004-2014⁸



Therefore, while it is clear that there has been a change in sentencing practice, further research is required to establish what has driven this (see conclusion and next steps).

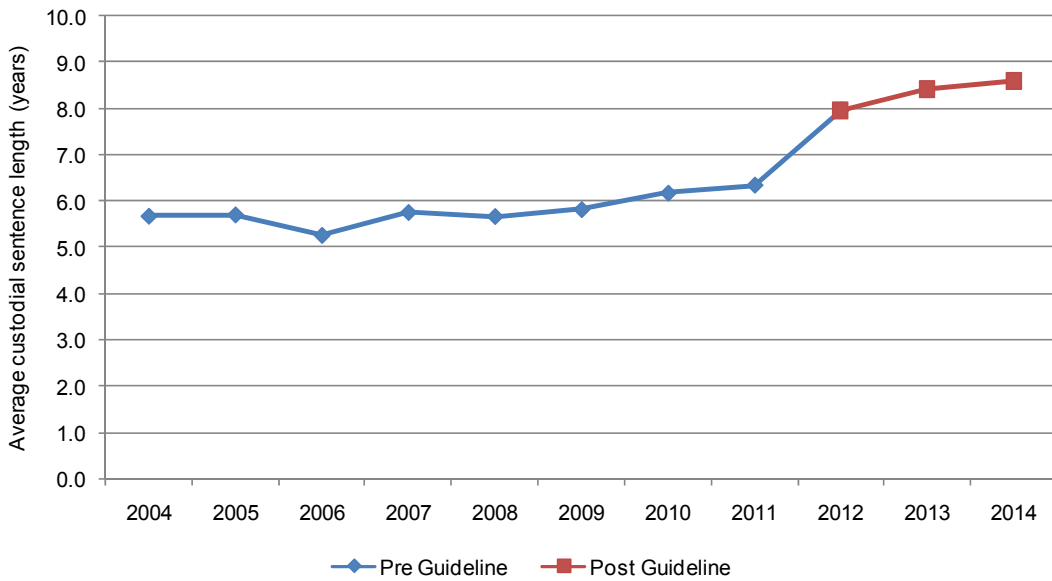
Aggravated Burglary (Theft Act 1968, s.10)

The majority of offenders sentenced for aggravated burglary in 2014 received an immediate custodial sentence (95 per cent). As with domestic and non-domestic burglary, there has been an increase in the use of immediate custody and a corresponding decrease in community orders. Suspended sentence orders have also decreased.

Adjusted ACSLs have increased since the introduction of the guideline, with the ACSL increasing from 6 years and 4 months in 2011 to 8 years in 2012. This increase has continued to 2014 - with an average ACSL of 8 years and 7 months (see Figure 8).

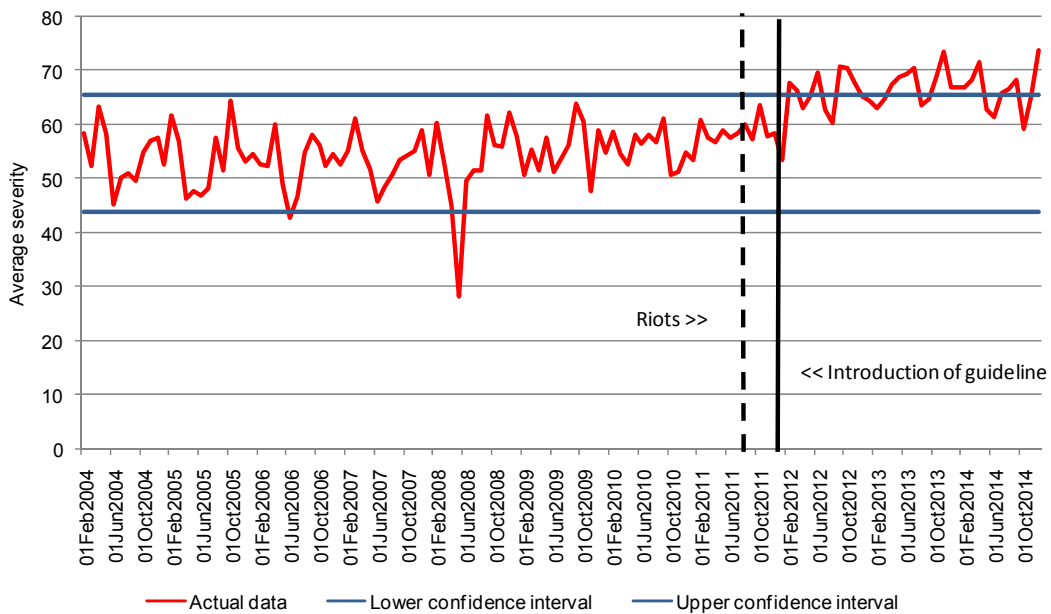
⁸ The blue lines show the confidence interval (also referred to as margin of error) of the estimate. At the 95 per cent confidence level, over many repeats of a survey under the same conditions, one would expect that the confidence interval would contain the true population value 95 times out of 100.

Figure 8: Adjusted ACSL for aggravated burglary, 2004-2014



It is not possible to produce a time-series forecast of severity for aggravated burglary due to the small sample size. Figure 9 shows however, that average sentence severity increased at the end of 2011, before the guideline came into force and has subsequently remained at a higher level. However, due to low volumes these figures are very volatile and should be interpreted with caution. Consequently, it is not possible to say whether the guideline has driven this increase or whether the rise is part of a long-term trend, as with domestic burglary.

Figure 9: Average monthly severity over time for aggravated burglary, 2004-2014



Conclusion and next steps

This exercise has enabled an initial assessment of sentencing trends in relation to burglary offences both before and after the Sentencing Council's definitive guideline came into force. These results have then been compared to the resource assessment for the guideline, which estimated there would be no impact on resources.

For domestic burglary cases there has been an increase in sentencing severity. However, this appears to be part of an upward trend and is therefore not likely to be linked to the release of the guideline. Therefore the current evidence suggests that the guideline has had no resource impact on domestic burglary cases.

For non-domestic burglary there has been a clear shift in sentencing severity. However, this increase started five months before the introduction of the guideline. It has not been possible to establish from the evidence available what the key factor was for this increase; additional analysis will be undertaken over the coming months to explore this further.

For aggravated burglary cases there has also been an increase in sentencing severity following the introduction of the guideline. However, due to the low volume of cases it has not been possible to undertake further detailed analysis to establish the causes for this.

Over the next few months the Sentencing Council will undertake further analysis to explore potential reasons for the observed changes in non-domestic burglary (and where samples allow, aggravated burglary). This may include regression analysis using the Crown Court Sentencing Survey⁹ to look at the important factors used in sentencing, pre and post implementation of the guideline. In addition, content analysis of transcripts of Crown Court sentencing remarks before and after the guideline came into force will be examined to ascertain whether any of the findings may be due to consideration of new factors in the guideline. The findings from this additional work will be published on the Sentencing Council's website in due course.

⁹ From 1st October 2010 to 31st March 2015 the Council conducted the Crown Court Sentencing Survey (CCSS) which collected data on sentencing practice in the Crown Court:
<https://www.sentencingcouncil.org.uk/analysis-and-research/crown-court-sentencing-survey/>