

Assessing the impact of the Sentencing Council's Burglary offences definitive guideline

Summary

- An initial assessment of the Sentencing Council's burglary offences definitive guideline indicated there had been an unanticipated increase in sentence severity for non-domestic and aggravated burglary offences since the guideline came into force. For domestic burglary offences there was also an increase in sentence severity, although this appeared to be part of a long-term trend.
- Further analysis of **non-domestic burglary** data has shown that the increase in severity seen for these offences may be attributable to the guideline and has been primarily driven by an increase in severity in magistrates' courts, where both the average custodial sentence length (ACSL) and custody rate have been increasing.
- Analysis of Crown Court Sentencing Survey (CCSS) data supports this interpretation as it has been found that a greater proportion of offenders are now being placed in the highest offence category (category 1), there has been an increase in the custody rate for offenders in this category, and greater harm and higher culpability factors are being taken into account by sentencers more often than lesser harm and lower culpability factors.
- These findings are supported by content analysis of judges' sentencing remarks, which suggests that the new definition of loss as 'economic, commercial or personal' (compared with the use of monetary values in the previous Sentencing Guidelines Council guideline) may have led sentencers to place offenders in category 1 more often.
- Additional analysis of **domestic burglary** data has shown that the guideline may have had a slight effect on increasing severity for these offences: more offenders are now placed in category 1; the custody rate in category 1 has been increasing; and greater harm/higher culpability factors are taken into account more often than their counterparts.
- Content analysis of sentencing remarks supports these findings, suggesting that the definition of loss as 'economic, sentimental or personal' may be causing more offenders to be placed in category 1. The post-guideline increase for domestic burglary is, however, within the range expected based on historical trends.
- For **aggravated burglary** offences, further analysis has shown that the increase in severity may also be attributable to the guideline: custodial sentence lengths have been increasing; a high proportion of offenders are placed in category 1; and qualitative analysis strengthens this finding, indicating that the prevalence of greater harm/higher culpability factors may cause the majority of offenders to be placed in category 1 (although these findings should be treated with caution due to low volumes).

Introduction

The Sentencing Council's burglary guideline came into force on 16th January 2012.¹ The guideline aimed to promote greater consistency of sentencing rather than alter current practice. As a result, the resource assessment published alongside the guideline concluded that it would have no impact on prison and probation services.²

An initial assessment of the Sentencing Council's burglary guideline was published in January 2016.³ The assessment indicated that since the guideline came into force, sentencing severity had increased across all types of burglary covered by the guideline, although for domestic burglary this appeared to be part of a longer term trend.

There were a number of potential reasons for the increase seen in sentencing severity that were explored, including those detailed below:

- Changes to the definition of "loss" in the Sentencing Council's guideline, compared with the previous Sentencing Guidelines Council (SGC) guideline for non-domestic burglary,⁴ affecting the proportion of offenders in each offence category;
- The inclusion of new aggravating factors, for example "Offence committed at night";
- The riots of 2011 (the widespread public disorder featuring the looting of shops that took place in August of that year, and therefore pre-dated the coming into force of the guideline), which caused an immediate increase in sentencing severity for non-domestic burglary and may therefore have contributed to the continued increase seen in 2012 onwards; and,
- Offenders sentenced for a third qualifying domestic burglary being given a custodial sentence of at least three years.⁵

This paper details the results of the further analysis undertaken on burglary offences, to investigate possible explanations for the increase seen in sentencing severity for these offences.

Methodology

Data from the Ministry of Justice's Court Proceedings Database (CPD)⁶ has been used to analyse sentencing trends for offenders sentenced in magistrates' courts and the Crown Court,

¹ http://www.sentencingcouncil.org.uk/wp-content/uploads/Burglary_Definitive_Guideline_web_final.pdf

² <http://www.sentencingcouncil.org.uk/publications/item/burglary-offences-final-resource-assessment/>

³ <http://www.sentencingcouncil.org.uk/publications/item/burglary-offences-assessment-of-guideline/>

⁴ Prior to the Sentencing Council's burglary guideline, there were no Crown Court guidelines for domestic and aggravated burglary (although there was limited guidance on domestic burglary in the Magistrates' Court Sentencing Guidelines).

⁵ Under Section 111 of the Powers of the Criminal Courts (Sentencing) Act 2000, offenders sentenced for a third qualifying domestic burglary must be given a custodial sentence of at least three years, unless the court is satisfied that there are particular circumstances which would make it unjust to do so.

⁶ The CPD data presented in this paper only include cases where the burglary 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.

for burglary offences covered by the guideline.⁷ Analysis has also been undertaken of cases where offenders were sentenced for a third domestic burglary, using data from the Police National Computer (PNC).

Crown Court Sentencing Survey (CCSS)⁸ data has been analysed for non-domestic and domestic burglary offences.^{7,9} This includes: analysis of the proportion of offences in each offence category, both before and after the guideline came into force; statistics on the prevalence of sentencing factors in the guideline; and regression analysis, to isolate the influence of specific sentencing factors on sentencing severity. The regression model used sentencing data completed on the 'Burglary Offences' CCSS form, relating to both non-domestic and domestic burglary, covering the period 16th January 2012 to 31st December 2014.¹⁰

A content analysis of Crown Court judges' sentencing remarks was carried out for 60 non-domestic burglary cases (30 pre-guideline and 30 post-guideline), 61 domestic burglary cases (31 pre-guideline and 30 post-guideline), 30 aggravated burglary cases (15 pre-guideline and 15 post-guideline),¹¹ and 20 riot-related cases. The purpose of this analysis was to generate qualitative insights into how the judges were sentencing burglary cases both before and after the guideline came into force. As such, numbers are only indicative and findings are tentative, merely suggesting reasons for patterns observed in the quantitative data.¹²

All of the analysis in this paper includes adult offenders only (those aged 18 or over at the time of conviction), as the burglary guideline is not applicable to children and young people.

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 in this bulletin. It is important to note that the CPD 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 within the guide to their Criminal Justice Statistics publication which can be downloaded via the link: <https://www.gov.uk/government/collections/criminal-justice-statistics>.

⁷ An attempt has been made to exclude offences related to the riots from this analysis, so they do not bias the overall results. It is possible, however, that some riot-related cases are still included in the analysis and may be influencing the results seen.

⁸ During the period 1 October 2010 to 31 March 2015, the Sentencing Council conducted a data collection exercise called the Crown Court Sentencing Survey (CCSS). The CCSS recorded details on the factors taken into account by the judge when determining the appropriate sentence for an offender (such as harm and culpability factors, and aggravating and mitigating factors), and the final sentence given. For further information see <http://www.sentencingcouncil.org.uk/analysis-and-research/crown-court-sentencing-survey/>.

⁹ It has not been possible to undertake detailed CCSS analysis for aggravated burglary offences due to low volumes.

¹⁰ Variables which were present on at least five per cent of CCSS forms were selected for the regression model, these were then entered into the model simultaneously (using a "forced entry" method).

¹¹ The pre- and post-guideline samples were selected to cover a representative range of high, medium and low sentences, making them broadly comparable with one another.

¹² The Sentencing Council would like to acknowledge Lauren Bowes for her work in analysing sentencing remarks for these offences.

Findings

Non-domestic burglary

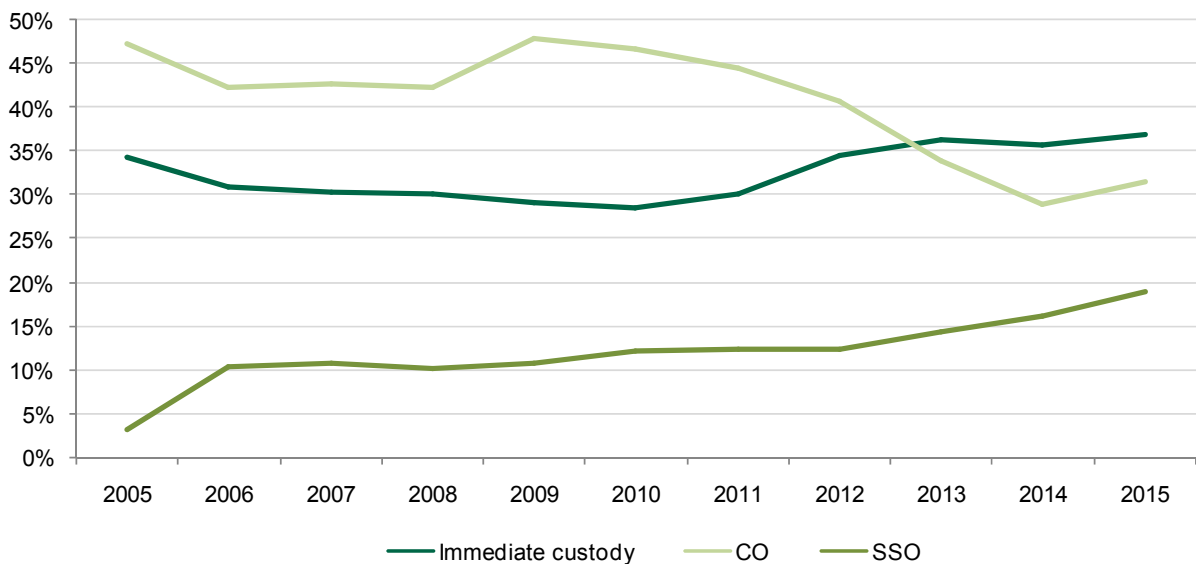
For non-domestic burglary, the initial assessment showed a substantial increase in sentencing severity in August 2011, followed by an additional ongoing uplift in severity after the guideline was introduced. This increase was in excess of what would be expected based on historical trends; however, it was not clear whether the increase was attributable to the guideline. The findings from the additional analysis undertaken for these offences are detailed below.

Magistrates' courts sentencing trends

The majority of offenders sentenced for non-domestic burglary offences are sentenced in magistrates' courts (65 per cent in 2015).¹³ The custody rate for offenders sentenced in magistrates' courts has generally been increasing since the guideline came into force. Between 2006 and 2011 the custody rate remained relatively stable, at around 30 per cent, however in 2012 it increased to 34 per cent, and continued to increase to 37 per cent in 2015 (see figure 1).

The increase in severity may also be partly driven by general sentencing trends seen more widely (in both magistrates' courts and the Crown Court), for example the use of community orders (COs) has been decreasing while the use of suspended sentence orders (SSOs) has been increasing (as found in the initial assessment).¹⁴

Figure 1: Sentence outcomes received by adult offenders sentenced for non-domestic burglary offences in magistrates' courts, 2005-2015



¹³ Source: Court Proceedings Database, Ministry of Justice.

¹⁴ Since December 2012, under the Legal Aid, Sentencing and Punishment of Offenders Act 2012, custodial sentences of two years or less can be suspended and the imposition of community requirements is discretionary. This may have contributed to the increase in suspended sentences seen across the criminal justice system since 2012. For more information see: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/614414/criminal-justice-statistics-quarterly-december-2016.pdf (p24)

In the years immediately preceding the guideline's introduction (2008-2011), the average custodial sentence length (ACSL) was relatively stable in magistrates' courts, at just over 4 months (prior to any guilty plea reduction).¹⁵ In 2012 the ACSL increased slightly, to around 4.5 months; however as this is a small increase and the ACSL has not been consistently higher in every year since the guideline's introduction, it has not been a driving factor of the increase in severity.

The increase in custody rate combined with the increase in SSOs and decrease in COs in magistrates' courts has largely driven the increase in sentencing severity seen for non-domestic burglary overall (as the majority of offenders are sentenced here). As the increase in custody rate started around the same time as the introduction of the guideline, it is possible that the guideline may have contributed to this effect. However, without further information about sentencing reasons at magistrates' courts,¹⁶ it is difficult to isolate the effects of the guideline on the use of these disposals from other sentencing trends, or to identify which specific aspects of the guideline might have led to the increase.

Crown Court sentencing trends

Sentencing severity for offenders sentenced in the Crown Court has generally been increasing since 2010, but at a less steep rate than the increase seen in magistrates' courts. This indicates that the overall increase in severity has been mainly driven by offenders sentenced in magistrates' courts, as opposed to the Crown Court.

Since 2010 the custody rate for offenders sentenced in the Crown Court has generally been increasing, from 60 per cent in 2010 to 70 per cent in 2015. Over the same period the ACSL has remained relatively stable, at around 1 year 10 months (prior to any guilty plea reduction).¹⁷

Offence categories

Prior to the Sentencing Council's burglary guideline coming into force in January 2012, a guideline produced by the Sentencing Guidelines Council was in use for non-domestic burglary offences.¹⁸ This guideline contained three offence categories, with level 1 being the most serious category, and level 3 the least serious. Offences were only placed in the highest offence category, level 1, if the value of the goods taken was £20,000 or more. The Sentencing Council's guideline followed a new model based on three offence categories, relating to the harm caused during the commission of the offence and also the culpability of the offender. Under this guideline, an offence would be placed in the highest offence category if it involved greater harm and higher culpability (see figure 2).

¹⁵ 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.

¹⁶ Unlike the Crown Court, proceedings in magistrates' courts are not recorded, therefore it is not possible to obtain transcripts of sentencing remarks from magistrates' courts.

¹⁷ Source: Court Proceedings Database, Ministry of Justice.

¹⁸ https://www.sentencingcouncil.org.uk/wp-content/uploads/Theft_and_Burglary_of_a_building_other_than_a_dwelling.pdf

Figure 2: Determining the offence category, Sentencing Council Burglary offences definitive guideline

The court should determine the offence category using the table below.

Category 1	Greater harm and higher culpability
Category 2	Greater harm and lower culpability or lesser harm and higher culpability
Category 3	Lesser harm and lower culpability

Analysis of CCSS data¹⁹ shows that the proportion of offenders in the most serious category (category 1, which has a sentence range from one to five years’ custody under the new guideline) has been increasing since 2011, from 16 per cent in 2011 to 36 per cent in 2014 (see figure 3).^{20, 21} A possible explanation for this is that the threshold for falling into the greater harm and higher culpability categories is lower than in the previous guideline (where the £20,000 value criteria needed to be met), and so there is now wider scope for offenders to be placed in the highest category of seriousness and receive a higher sentence.

These findings are supported by the content analysis of transcripts of Crown Court judges’ sentencing remarks, which indicated that the move from a clear monetary value in the SGC guideline to the perceived value of the goods stolen (i.e. the greater harm factor “Theft of/damage to property causing a significant degree of loss”) might have led to more cases being categorised as high in harm: only two cases (out of 30) in the pre-guideline sample appeared to meet the criteria for high harm as involving goods to the value of £20,000 or over, whereas nine cases (out of 30) in the post-guideline sample featured the factor describing a significant degree of loss to the victim.²²

Conversely, the proportion of offenders in category 3 has been decreasing (from 54 per cent in 2011 to 17 per cent in 2014), indicating it is now less likely that offenders will be placed in the lowest offence category. This finding is also corroborated by the qualitative research, which showed that there were only five cases in the post-guideline sample where either of the two lesser harm factors (“Nothing stolen or only property of very low value” and “Limited damage or disturbance to property”) were cited, suggesting that relatively few cases in this particular sample would be viewed by the judge as being of lesser harm.

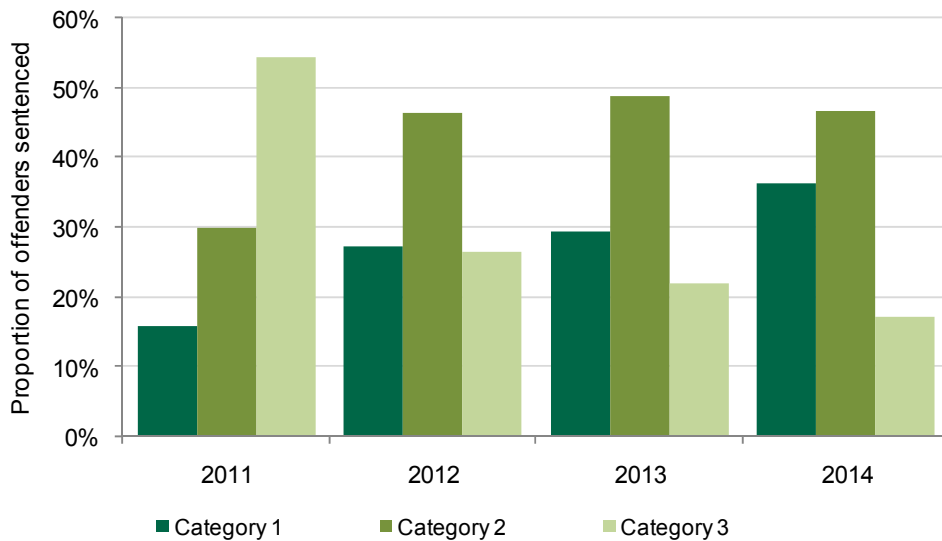
¹⁹ In 2011, burglary offences were recorded on the CCSS form for ‘Theft, dishonesty, burglary and fraud’. This form included five levels for offence seriousness and therefore, although the SGC non-domestic burglary guideline contained three levels of seriousness, sentencers did, on occasion, tick level 4 and level 5. For the purposes of this analysis, those cases have been grouped with level 3, the ‘least serious’ category.

²⁰ A chi-square test showed that there is a statistically significant difference (at the one per cent level) in offence categorisation between the years 2011 and 2014.

²¹ Information on offence categories for cases sentenced in magistrates’ courts is not available, however category 1 offences would normally be sentenced in the Crown Court, as the sentence range for these offences is higher than magistrates’ sentencing powers.

²² A value over £20,000 was only cited by the judge in two cases in the pre-guideline sample. However, this analysis is based on judges’ sentencing remarks, therefore it is possible that some aspects of a case may have been present but not explicitly stated by the judge when sentencing.

Figure 3: Distribution of offence category for non-domestic burglary, Crown Court, 2011-2014^{23, 24}



Within category 1, the custody rate increased from 75 per cent in 2011 to 85 per cent in 2012, and since then has remained at a higher rate than in 2011 (between 82 and 83 per cent). The fact that more offenders are now in category 1, combined with a higher proportion of these offenders now receiving an immediate custodial sentence, is likely to have contributed to the increase seen in sentencing severity for these offences.

Culpability and harm factors

CCSS analysis shows that 60 per cent of non-domestic burglary Crown Court cases had one or more higher culpability factors taken into account, whereas only 11 per cent had one or more lower culpability factors taken into account. Similarly, 46 per cent of cases indicated at least one greater harm factor was taken into account, compared with 33 per cent for lesser harm.

This may be partly due to there being more factors to choose from in the greater harm and higher culpability boxes,²⁵ indicating that it may be easier for sentencers to place an offender in greater harm and higher culpability than in lesser harm and lower culpability, and therefore it may be more likely that they will be placed in the highest offence category.

Prevalence and influence of individual factors

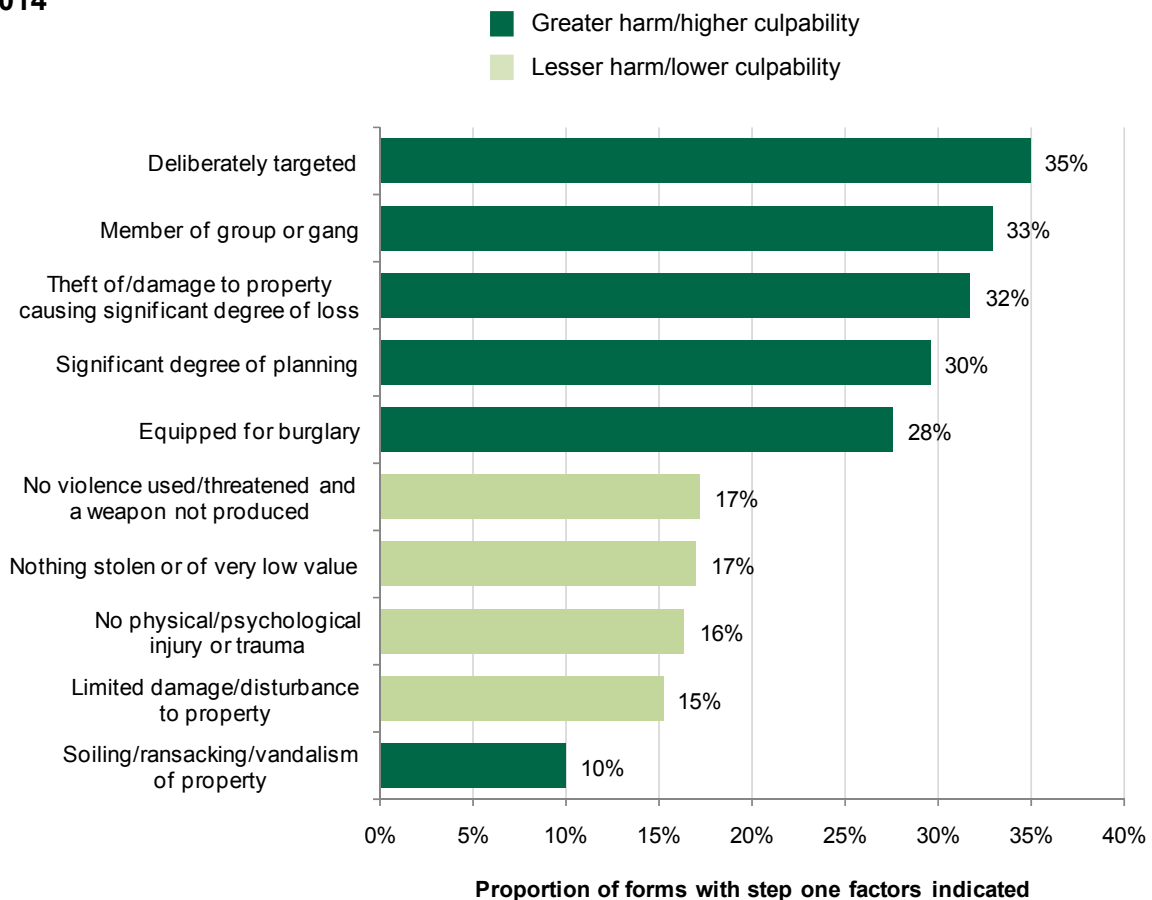
Figure 4 shows the most prevalent step one factors for non-domestic Crown Court burglary offences sentenced during the period 2012 to 2014, based on CCSS data. “Deliberately targeted”, a higher culpability factor, was the most prevalent; present on 35 per cent of forms, followed by the greater harm factor “Theft of/damage to property causing significant degree of loss” (33 per cent).

²³ Proportions have been calculated based on forms where the offence category was indicated (2011: n=680; 2012: n=880; 2013: n=1,100; 2014: n=1,200). In 2011, half of CCSS forms returned relating to non-domestic burglary did not indicate an offence category.

²⁴ Data for 2012 covers the period after the guideline came into force (16th January 2012 onwards).

²⁵ See page 12 of the Sentencing Council’s Burglary Offences Definitive Guideline: http://www.sentencingcouncil.org.uk/wp-content/uploads/Burglary_Definitive_Guideline_web_final.pdf.

Figure 4: Prevalence of step one factors for non-domestic burglary, Crown Court, 2012-2014²⁶



This is supported by the content analysis of sentencing remarks, which indicated that across both samples, cases receiving high sentences were characterised by the higher culpability factors “Deliberately targeted” and “Significant degree of planning”, which, when combined with the greater harm factor “Theft of/damage to property involving a significant degree of loss”, meant it seemed relatively easy for cases in the post-guideline sample to meet the criteria for category 1 (greater harm and higher culpability).²⁷ In addition, factors which were not included as indicators of high culpability in the SGC guideline but are in the current guideline were cited relatively frequently, potentially leading to more offences being classified as category 1 or 2. These included “Equipped for burglary” and “Member of group or gang”. The aggravating factor of “Offence committed at night” – a factor which did not appear in the SGC guideline – was the most commonly cited aggravating factor in the post-guideline sample.²⁸

²⁶ Only shows factors with a prevalence of 10 per cent or higher.

²⁷ Content analysis was undertaken of 60 non-domestic burglary cases to augment our understanding of sentencing before and after the introduction of the guideline. This comprised 30 pre-guideline cases and 30 post-guideline. Because of the relatively low numbers, care must be taken in interpreting these data: they merely give an indication of what might be happening in practice, rather than offering a more conclusive view.

²⁸ Excluding previous convictions.

A regression analysis of CCSS data was also undertaken to examine which sentencing factors had the greatest influence on sentencing severity.²⁹ The factor which had the strongest association with increased sentencing severity was the step one factor “Theft of/damage to property causing significant degree of loss”. The presence of this factor added around 38 per cent (five months) to the average custodial sentence length for immediate custodial sentences. In addition, the step one factor “Deliberately targeted” had a significant effect on sentencing severity, adding four months to the average custodial sentence length (30 per cent).

Riot cases

Content analysis of a small sample of riot cases (n = 20)³⁰ was undertaken to ascertain whether these cases were sentenced differently to non-riot cases during the same period, as the initial published assessment suggested it was possible that the riots influenced the general climate at the time.

In these transcripts, judges appeared to view offenders as either (a) actively involved in the riots themselves, or (b) taking advantage of the disorder to burgle vulnerable premises, with the former group tending to receive higher sentences than the latter. Moreover, most judges referred to a purposeful upping of sentencing for cases relating to the riots, with some noting that they were departing from the guidelines in these instances. The context of the riot led to relatively high sentences even when the offender’s actions were opportunistic, implying that riot cases were treated in a slightly different way to non-riot related cases. This suggests that the riots might have had only a time and place-limited effect on sentencing for non-domestic burglary, namely they did not appear to cause the continuing upward trend in sentencing for these offences.

Summary of findings

Although the increase in sentencing severity for non-domestic burglary has been primarily driven by an increase in severity in magistrates’ courts, the findings from the Crown Court analysis indicate that several features of the guideline may have contributed to the increase seen for these offences, such as the expanded definition of “loss”, and the harm and culpability factors (both in number and nature) used to determine the appropriate offence category; these are both leading to a greater proportion of offenders being placed in the highest offence category.

Domestic burglary

For domestic burglary, the initial assessment showed a gradual increase in sentencing severity over time, which continued after the introduction of the guideline. It was not clear whether the guideline had contributed to the increase in severity, although the increase seen was not above what would be expected based on historical trends. The findings from the additional analysis undertaken for these offences are detailed below.

²⁹ The model comprises sentencing data completed on the ‘Burglary Offences’ CCSS form relating to non-domestic burglary, covering the period 2012-2014. Variables that were present on at least five per cent of CCSS forms were selected for the model, using a forced entry method.

³⁰ The cases analysed during the period of the 2011 riots were selected from a dataset that contained only riot-related offences.

Magistrates' courts sentencing trends

Only a minority of domestic burglary cases are sentenced in magistrates' courts (14 per cent in 2015). When the guideline came into force, the ACSL in magistrates' courts increased from 4.7 months in 2011 to 5.2 months in 2012 (prior to any guilty plea reduction), and has since remained stable. Unlike non-domestic burglary, however, the impact on sentence severity at magistrates' courts was minimal, as only a small proportion of offenders are sentenced there.

Crown Court sentencing trends

Since 2010, the ACSL has been increasing for offenders sentenced in the Crown Court, from 2 years 10 months in 2010 to 3 years 2 months in 2015 (prior to any guilty plea reduction). Similarly to non-domestic burglary, the use of COs has generally been decreasing, while the use of SSOs has been increasing (as noted in the initial assessment), however, as mentioned earlier it is difficult to isolate the effects of the guideline on the use of these disposals from other sentencing trends.

Third strike domestic burglary³¹

Under Section 111 of the Powers of the Criminal Courts (Sentencing) Act 2000, offenders sentenced for a third qualifying domestic burglary must be given a custodial sentence of at least three years, unless the court is satisfied that there are particular circumstances which would make it unjust to do so.

Since this Act came into force (in December 1999), the number of offenders sentenced for a third domestic burglary gradually increased to a peak of around 1,000 in 2012, and then decreased to 760 in 2015 (this reflects the fact that the overall number of offenders sentenced for domestic burglary has also been decreasing over the last few years).³² Although third strike offenders make up only a small proportion of all domestic burglary, the proportion has increased over time (as would be expected due to the cumulative effect of this legislation, with offenders already convicted of one or two domestic burglaries more likely to be sentenced for their third offence as time passes); see figure 5.^{33, 34}

Of the offenders sentenced for a third domestic burglary, the proportion sentenced to custody has increased over time, and of those sentenced to custody, the proportion sentenced to the recommended custody length has also increased. These trends for third strike offenders will have contributed to the increase in sentencing severity for domestic burglary as a whole during this period, although as this group of offenders comprises less than 10 per cent of all offenders

³¹ The figures relating to third strike domestic burglary include the offence 'aggravated burglary in a dwelling', which is categorised within the Sentencing Council's aggravated burglary guideline (as opposed to the domestic burglary guideline); however this only comprises a small proportion of the total.

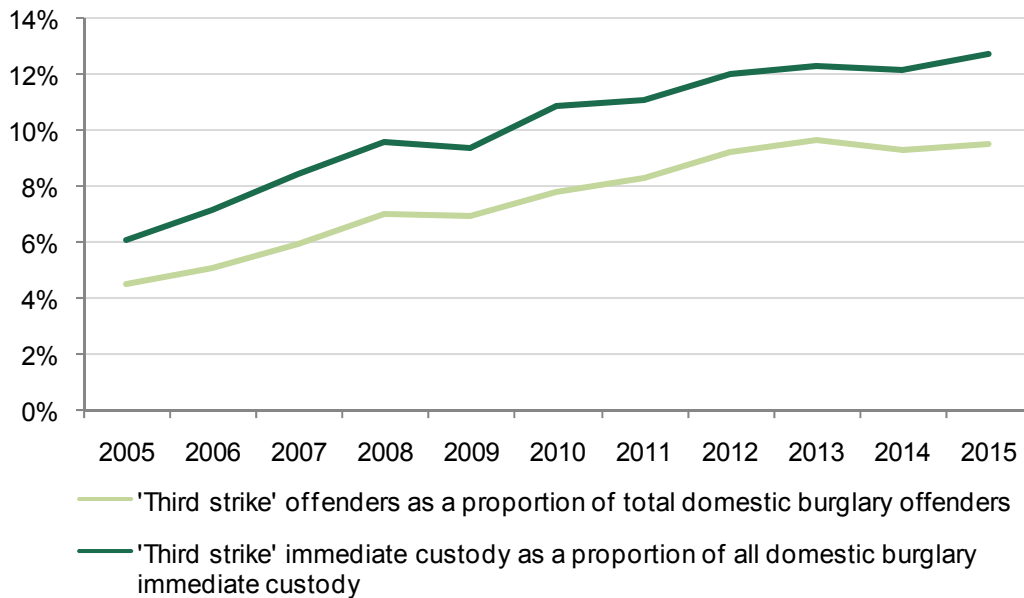
³² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/524258/criminal-history-tables-2015.xls (Table A6.3)

³³ Data have been taken from the MoJ extract of the Police National Computer. This includes details of all convictions, cautions, reprimands or warnings given for recordable offences (see [www.legislation.gov.uk/ukxi/2000/1139/schedule/made for definition](http://www.legislation.gov.uk/ukxi/2000/1139/schedule/made%20for%20definition)).

³⁴ Proportions are based on counts which refer to occasions on which an offender was convicted of domestic burglary. Individuals convicted of domestic burglary on multiple occasions during the period will appear multiple times. If an offender was convicted of three or more domestic burglary offences on separate occasions under the age of 18, the first subsequent conviction for domestic burglary at the age of 18 or over has been counted.

sentenced for domestic burglary, this is unlikely to be one of the main drivers of the increase in severity.

Figure 5: Adult offenders sentenced for a third domestic burglary as a proportion of all domestic burglary offenders, 2005-2015



Offence categories

Unlike non-domestic burglary, prior to the Sentencing Council’s burglary guideline coming into force there was no Crown Court guidance for domestic burglary.³⁵ The Council’s guideline for domestic burglary follows the same format as that for non-domestic burglary, with three offence categories and similar harm and culpability factors.

CCSS analysis shows that the proportion of offenders sentenced for domestic burglary who are placed in the most serious offence category (category 1, with a sentence range of two to six years’ custody) has been increasing since the burglary guideline came into force (as with non-domestic burglary), from 15 per cent in 2011 to 35 per cent in 2014; see figure 6.^{36, 37}

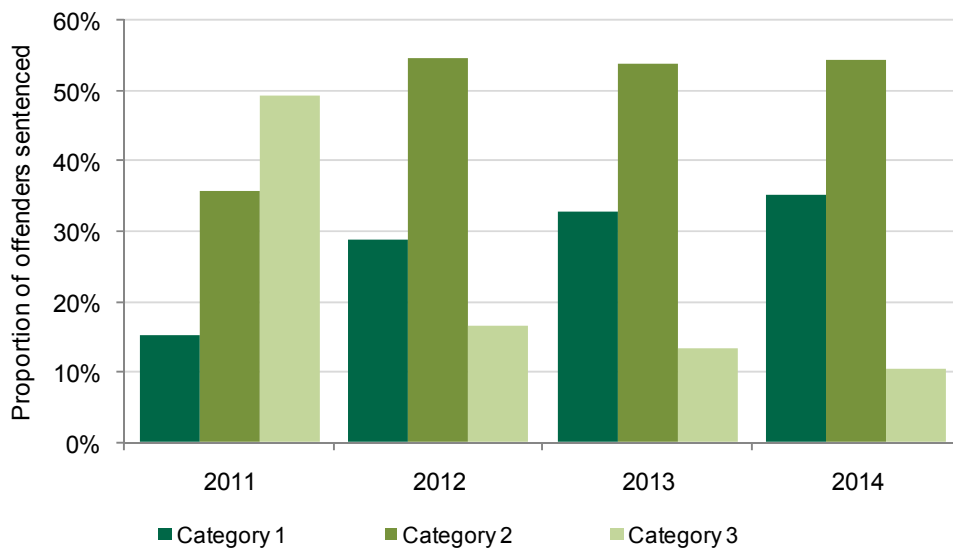
This finding is supported by the content analysis of sentencing remarks, which suggests that the broader definition of loss (‘economic, sentimental and personal’), denoted by the greater harm factor “Theft of/damage to property causing a significant degree of loss”, which was frequently cited as being taken into account in the post-guideline sample of cases, may have played a part in increasing sentencing severity.

³⁵ There was, however, guidance on domestic burglary in the Magistrates’ Courts Sentencing Guidelines.

³⁶ In 2011, burglary offences were recorded on the CCSS form for ‘Theft, dishonesty, burglary and fraud’. This form included five levels for offence seriousness and therefore, although the MCSG guidance for domestic burglary contained three levels of seriousness, sentencers did, on occasion, tick level 4 and level 5. For the purposes of this analysis, those cases have been grouped with level 3, the ‘least serious’ category.

³⁷ Data for 2012 covers the period after the guideline came into force (16th January 2012 onwards). Proportions have been calculated based on forms where the offence category was indicated (2011: n=1,000; 2012: n=3,500; 2013: n=4,400; 2014: n=4,400). In 2011, 80 per cent of CCSS forms returned relating to domestic burglary did not indicate an offence category.

Figure 6: Distribution of offence category for domestic burglary, Crown Court, 2011-2014



As with non-domestic burglary, the custody rate for offenders in category 1 has increased since the guideline came into force, from 80 per cent in 2011 to 93 per cent in 2014. The fact that there are now more offenders in category 1, and that a higher proportion of these offenders are now sentenced to custody, could in part explain the increase seen in sentencing severity for domestic burglary.

Culpability and harm factors

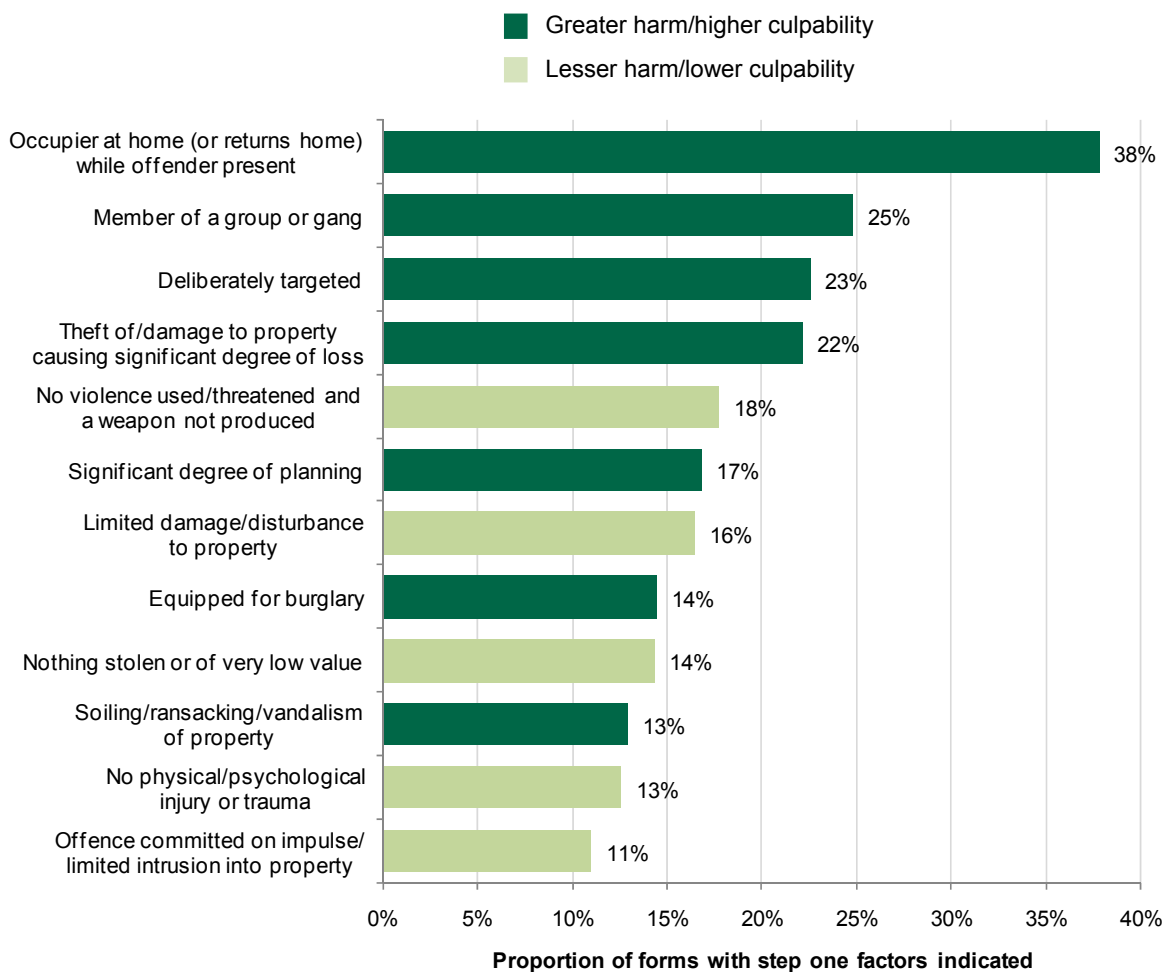
CCSS analysis shows that 48 per cent of domestic burglary cases had one or more higher culpability factors taken into account, whereas only 14 per cent had one or more lower culpability factors taken into account. Similarly, 62 per cent of cases indicated at least one greater harm factor was taken into account, compared with 31 per cent for lesser harm.

These results were supplemented by the qualitative research, which found that higher culpability and greater harm factors were cited notably more frequently in the sample than the lower culpability and lesser harm factors. As with non-domestic burglary, this may be partly due to there being more factors to choose from in the higher culpability and greater harm boxes, indicating that it may be easier for sentencers to place an offender in higher culpability and greater harm than in lower culpability and lesser harm, and subsequently end up in the highest offence category.

Prevalence and influence of individual factors

Figure 7 shows the most prevalent step one factors for domestic burglary offences sentenced during the period 2012 to 2014. The most common factor was “Occupier at home (or returns home) while offender present” (a greater harm factor); present on 38 per cent of forms, followed by the higher culpability factor “Member of a group or gang” (25 per cent).

Figure 7: Prevalence of step one factors for domestic burglary, Crown Court, 2012-2014³⁸



Regression analysis showed that, as with non-domestic burglary, the step one factors “Deliberately targeted” (higher culpability) and “Theft of/damage to property causing significant degree of loss” (greater harm) had a significant effect on sentencing severity, each adding around 10 per cent to the average custodial sentence length (three months and two months, respectively).³⁹

The qualitative research indicated that “Deliberately targeted” was almost always present with “Significant degree of planning” (as with non-domestic burglary).⁴⁰ It also indicated that the addition of new aggravating factors in the guideline may have had an inflationary effect on sentencing, for example, the aggravating factor “Offence committed at night” was cited frequently in the post-guideline sample, but did not appear to be mentioned at all in the pre-guideline sample. However, mitigating factors were cited more frequently in the post-guideline

³⁸ Only shows factors with a prevalence of 10 per cent or higher.

³⁹ The model comprises sentencing data completed on the ‘Burglary Offences’ CCSS form relating to domestic burglary, covering the period 2012-2014. Variables that were present on at least five per cent of CCSS forms were selected for the model, using a forced entry method.

⁴⁰ Content analysis was undertaken of 61 domestic burglary cases to augment our understanding of sentencing before and after the introduction of the guideline. This comprised 31 pre-guideline cases and 30 post-guideline. Because of the relatively low numbers, care must be taken in interpreting these data: they merely give an indication of what might be happening in practice, rather than offering a more conclusive view.

sample than in the pre-guideline sample, which may have helped to offset any rise in sentencing.

Summary of findings

The results for domestic burglary indicate that some aspects of the current guideline may have played a part in increasing sentencing severity, such as the harm and culpability factors used to determine the appropriate offence category, and the broad definition of “loss”. The post-guideline increase for domestic burglary is, however, within the range expected based on historical trends. It must also be noted that there was no Crown Court guideline for domestic burglary prior to the introduction of the Sentencing Council’s guideline in 2012; therefore cases sentenced without a guideline are being compared to those sentenced with a guideline, which perhaps makes the conclusions relating to shifts in sentencing more tentative.

Aggravated burglary

For aggravated burglary, the initial assessment showed an increase in sentencing severity after the guideline was introduced, above what would be expected based on historical trends. However, due to low volumes making this offence susceptible to large changes it was not possible to conclude whether the guideline had driven the increase. The findings from the additional analysis undertaken for these offences are detailed below.

Sentencing trends

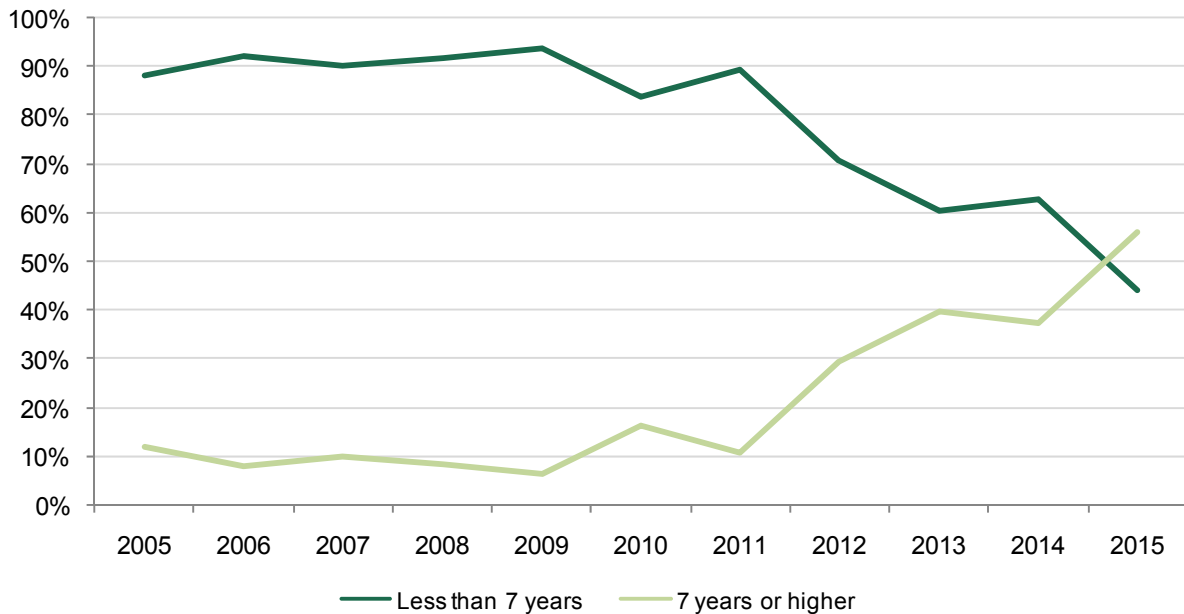
Aggravated burglary is a relatively low volume offence (compared to non-domestic and domestic burglary), with less than 320 offenders sentenced each year over the last decade. In 2015, approximately 220 adult offenders were sentenced for this offence.

Prior to the Sentencing Council’s guideline coming into force in January 2012, there was no guideline for sentencers relating to aggravated burglary offences. Figure 8 shows that during the period 2005 to 2011 (pre-guideline), the proportion of offenders receiving an immediate determinate custodial sentence of seven years or more (after any guilty plea reductions had been applied) was relatively stable, within the range of 6 to 16 per cent.⁴¹

Since the introduction of the guideline in 2012, however, this proportion has generally been increasing, and comprised 56 per cent of offenders in 2015. The fact that this increase in longer sentences coincides with the guideline coming into force implies that the guideline may have caused a shift in sentencing practice for these offences.

⁴¹ The starting point for aggravated burglary offences in Category 1 is 10 years’ custody. This equates to approximately 7 years’ custody after a guilty plea reduction of one third.

Figure 8: Adult offenders receiving an immediate determinate custodial sentence for aggravated burglary offences, by proportion who received sentences of more/less than 7 years, 2005-2015⁴²



Offence categories

CCSS analysis shows that in the period 16th January 2012 to 31st December 2014, around 70 per cent of offenders sentenced for aggravated burglary offences were placed in category 1, the most serious offence category. The starting point for this category is 10 years' custody, with a range from 9 to 13 years.

In addition, content analysis⁴³ showed that the majority of cases in the sample cited two or more greater harm or higher culpability factors (and no lesser harm or lower culpability factors), meaning that under the Council's guideline they ought to be placed in category 1. For culpability, "Weapon present on entry", "Deliberately targeted" and "Significant degree of planning" were almost always present; likewise the harm factors of "Victim on premises" and "Violence used or threatened" were almost always present. The prevalence of these factors in both the pre- and post-guideline samples suggest that the case mix has not changed, but rather that under the guideline a majority of cases are placed in category 1 and consequently receive sentences towards the top of the overall sentencing range, which appears to be higher than the level at which judges were sentencing without a guideline.

Summary of findings

The findings for aggravated burglary imply that the guideline may have contributed to the increase in sentencing severity for these offences; the quantitative analysis shows that offenders have been receiving longer sentences since the guideline came into force, and the qualitative work indicates that the harm and culpability factors included in the guideline are

⁴² Source: Court Proceedings Database, Ministry of Justice.

⁴³ Content analysis was undertaken of 30 aggravated burglary cases to augment our understanding of sentencing before and after the introduction of the guideline. This comprised 15 pre-guideline cases and 15 post-guideline. Because of the relatively low numbers, care must be taken in interpreting these data: they merely give an indication of what might be happening in practice, rather than offering a more conclusive view.

causing the majority of aggravated burglary cases to fall into category 1. These findings should, however, be treated with some caution, due to the low volumes involved. It should also be noted that there was no guideline for aggravated burglary prior to the introduction of the Sentencing Council's guideline in 2012 (i.e. cases sentenced without a guideline are being compared to those sentenced with a guideline).

Conclusion and next steps

The analysis undertaken as part of this exercise along with the initial findings published in January 2016 have enabled an assessment of the impact of the Sentencing Council's burglary guideline.

For non-domestic burglary, the findings suggest that the guideline may have contributed to the unanticipated increase seen in sentencing severity; namely the broadened definition of loss (compared to monetary values in the SGC guideline), and the harm and culpability factors cited in the guideline are leading sentencers now to place more offenders in the highest category of seriousness (category 1).

The findings are similar for domestic burglary; although the severity increase was not above that anticipated, it appears that the guideline may also have contributed to the increase seen for these offences, for the same reasons detailed above for non-domestic burglary.

For aggravated burglary, the findings again suggest that the guideline may have contributed to the unanticipated increase seen in sentencing severity, due to the harm and culpability factors cited in the guideline causing the majority of cases to fall in category 1 (although due to low volumes for aggravated burglary this conclusion is less explicit).

The Council has considered this analysis and is committed to reviewing the guideline in due course.

Author

Caroline Nauth-Misir
Office of the Sentencing Council