

## Annex A: Guide to CCSS Statistics

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This annex is to be read in conjunction with the *Crown Court Sentencing Survey (CCSS) Annual Publication, 2014* statistics release. It aims to provide background information on the key factors that judges take into account when passing a sentence at the Crown Court, to help understand the context of the data presented in the release.

The nature of the offence committed is not the only factor that needs to be considered when sentencing an offender. There are many other factors, both relating to the offence and the offender’s personal circumstances that will be taken into account when deciding on the appropriate sentence. If the offender pleads guilty, this will also be taken into account.

When reading this document, it is important to keep in mind that **every case is unique**. Therefore, there may be factors other than those expressed here, or collected on the CCSS that have an impact on the sentence. Furthermore, although the same factors may be present in two cases of the same offence, the specific circumstances of each case may mean that the factors are not given the same importance in both cases, which in turn will be reflected in the decision as to an appropriate sentence.

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## A.1 The Crown Court Sentencing Survey

The Crown Court Sentencing Survey (CCSS) was launched on 1 October 2010. Following a review last year, the Sentencing Council decided to stop gathering data using the CCSS, and data collection ceased on 31 March 2015. This is therefore the final publication of data from the survey. In the future, the Council will conduct bespoke data collection in both the Crown Court and magistrates' courts for specific guidelines, thereby extending analysis of sentencing practice into the magistrates' courts.

The CCSS was a census, not a sample survey; for every *new* sentence imposed at the Crown Court, the sentencing judge was expected to complete a survey form. Sentences resulting from the breach of a previous order are not classed as *new* sentences and were therefore not included in the scope of the survey.<sup>1</sup> Cases dealt with by magistrates' courts were not covered by the survey; however as part of the new way of working, the Council is currently conducting exploratory work into the most appropriate method for collecting data from magistrates' courts.

The survey recorded details on the factors taken into account by the judge when determining the appropriate sentence for an offender and the final sentence given. All details recorded on the form, including the sentence outcome, were in relation to the **principal offence** only. Where an offender committed multiple offences on one occasion, the principal offence will be the offence that attracted the harshest punishment. For example a burglar who enters the scene with an offensive weapon may be convicted of both the offence of burglary and the offence of possession of a weapon, but the principal offence would be burglary.

Over the period to which the 2014 statistical release relates, the twelve different offence type forms in use were:

- arson and criminal damage;
- assault and public order;<sup>2</sup>
- burglary;<sup>2</sup>
- driving offences;
- drug offences;<sup>2</sup>
- offences causing death;
- robbery and assault with intent to rob;
- indecent photographs of children;<sup>2,3</sup>
- sexual offences (except indecent photographs of children);<sup>2,3</sup>
- fraud, bribery and money laundering;<sup>2,4</sup>
- theft offences;<sup>5</sup> and

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<sup>1</sup> Unless the breach is itself an offence requiring a new sentence.

<sup>2</sup> For the offences covered by these forms, a definitive guideline has been introduced by the Sentencing Council. Therefore, the structure of these forms varies slightly from the other forms. This has been done so that they better reflect the decision-making process defined by Sentencing Council definitive guidelines.

<sup>3</sup> Came into force on 1 April 2014

<sup>4</sup> Came into force on 1 October 2014

<sup>5</sup> This was the theft, dishonesty and fraud offences form until 1 October 2014 when fraud offences were removed and completed on the new fraud, bribery and money laundering offences form.

- other offences.<sup>6</sup>

Only one of these forms was completed for each sentence, based on the principal offence. The forms were drafted to take into account that the likely key factors considered will differ substantially between offence types. For example, whether the offence was committed at night would be considered an important factor for a robbery case, but would be unlikely to be of any relevance for most drugs offences.

## A.2 What is the Crown Court and what offences are sentenced there?

All criminal cases in England and Wales start in a magistrates' court. The less serious offences are handled entirely in magistrates' courts. More serious offences are transferred to the Crown Court, either for sentencing or for trial with a judge and jury. The Crown Court also receives appeals against decisions of the magistrates' courts.<sup>7</sup>

The Crown Court sits in approximately 74 different locations across England and Wales (known as Crown Court centres). Crown Court cases may be heard by circuit judges, recorders or a high court judge, depending on the seriousness of the offence. For further details on the types of cases that each of these judges might deal with, please visit the judiciary website.<sup>8</sup>

Procedurally, there are two categories of offence that may be sentenced at the Crown Court.<sup>9</sup> The first type of offence is a **triable either way** offence, which is one that can be dealt with at a magistrates' court or the Crown Court. The decision as to whether an either way offence is transferred to the Crown Court from a magistrates' court will usually depend on whether the magistrates' courts' powers of sentencing are considered sufficient enough to adequately deal with the case.<sup>10</sup> The second type is an **indictable only** offence, which is considered to be of such gravity that it can only be dealt with at the Crown Court.

## A.3 What factors are taken into account to determine the sentence?

In addition to having regard to the five purposes of sentencing (see the sentencing basics section of the Sentencing Council's website<sup>11</sup>), the factors that a judge or magistrate will take into account to determine the appropriate sentence include:

- **the category (or level) of the offence** – this is determined by looking at the harm caused, or intended to be caused, and the culpability of the offender;
- the offender's recent and relevant **previous convictions**;
- **aggravating factors** – these are factors which may suggest that a higher sentence is appropriate such as targeting a particularly vulnerable victim;
- **mitigating factors** – these are factors which may suggest a lower sentence is appropriate such as the fact that the offence is an isolated incident;

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<sup>6</sup> Includes information for other guidelines that came into force during 2014 which were collected on the "other offences" form due to the low volume of offences sentenced.

<sup>7</sup> Youths (under 18 years of age) are usually seen at the youth court, which is part of the magistrates' court. However, if the case is particularly serious, it may be seen at the Crown Court. Where this occurs, the case would have been recorded by the survey.

<sup>8</sup> <http://www.judiciary.gov.uk>

<sup>9</sup> Other than appeals against decisions of the magistrates' courts.

<sup>10</sup> Although the defendant may also elect to be transferred to the Crown Court for trial by jury.

<sup>11</sup> <http://www.sentencingcouncil.org.uk/about-sentencing/sentencing-basics/>

- **personal mitigation** – these are factors relating to the offender, for example, if the offender has no previous history of offending;
- whether the offender **pleaded guilty** – by law, the court must take into account the stage and circumstances under which the offender pleads guilty;
- **totality** – in other words, where an offender is being sentenced for more than one offence the court must ensure that the total sentence is just and proportionate to all of the offending behaviour;
- **the relevant law** including the maximum and, in some cases, minimum sentence; and
- any **sentencing guidelines** relevant to the offence committed.<sup>12</sup>

These factors may be relevant in determining the type of sentence as well as the sentence length, any requirements attached to the sentence or the amount of any fine imposed. Not all offenders committing the same offence will be given the same sentence because each sentence will depend on the circumstances of the crime and the offender. The factors taken into account will vary depending upon the facts of each individual case.

For each sentence imposed at the Crown Court, details of the first six factors described above were recorded on the CCSS forms. There were opportunities for the judge to record any other factors that they deemed to have influenced the sentence on the form, although not in the same level of detail. The following sections describe in detail how the specific factors recorded on the form were taken into account by the judge sentencing the offender.

#### A.4 Offence category (level of harm and level of culpability)

The judge is required by statute to pass a sentence that is commensurate with the seriousness of the offence.<sup>13</sup> The seriousness of an offence is determined by two main parameters: the **culpability** of the offender and the **harm** caused, or risk of being caused, by the offence. **Category 1 (or level 1)** relates to an offender with a high level of culpability and where a high level of harm was caused. Less serious offences, where less harm was caused or the offender had lower culpability, are categorised by a higher category number. Therefore a category 2 (level 2) offence is considered less serious than a category 1 (level 1) offence and so on.

The **culpability** of the offender describes the offender's responsibility for committing the offence including their intent and/or motive and the circumstances in which the offence was committed. This is sometimes referred to as their blameworthiness. Where it can be shown that the offence has been planned and the offender had the **intention** to cause harm, the offender is considered to have a high level of culpability.

**Harm** is that caused to individual victims, to the community, or other forms of harm, for example, psychological distress to those not directly involved. The assessment of harm is not just restricted to where actual harm is caused, but also where a risk of harm is present.

The Sentencing Guidelines Council's (SGC)<sup>14</sup> guideline: *Overarching Principles: Seriousness* provides further guidance for judges and magistrates on how to assess seriousness.<sup>15</sup>

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<sup>12</sup> For further information on the role of sentencing guidelines, please see the Sentencing Council's website: <http://www.sentencingcouncil.org.uk/about-sentencing/about-guidelines/>

<sup>13</sup> s.143(1) Criminal Justice Act 2003

<sup>14</sup> One of the Sentencing Council's predecessor bodies.

<sup>15</sup> A copy of *Overarching Principles: Seriousness* is available for download at: <http://www.sentencingcouncil.org.uk/publications/?type=publications&cat=definitive-guideline&s&topic&year>

Where a guideline exists for an offence, the guideline provides a set of **offence categories (or levels)** by which to assess the **culpability** of the offender and the **harm** caused. For each category in the guidelines, a recommended sentence range and a **starting point** within this range are provided. Any further factors then taken into account serve to either move the sentence up or down from the starting point, depending on the nature of the factors considered. Other key factors that will be considered by the judge are whether the offender has any recent or relevant previous convictions, whether they pleaded guilty and any other factors relating to the case or offender that provide the context to how and why the offence was committed. These are discussed in later sections.

It is important to note that the offence category is a measure of seriousness *across offences of the same type*. This means that the offence category does not give any information about the seriousness of an offence relative to another offence of a different type, even if the categories of the two offences are the same. For example, a category 1 assault cannot be compared to a category 1 theft, but a category 1 assault will be considered more serious than a category 3 assault. It should be noted that since the development of the Council's drug offences guideline, the categorisation of harm has evolved from the simpler approach used in the assault and burglary offences guidelines to a more complex multiple dimension approach.

Where a guideline existed for an offence, the CCSS form recorded the relevant offence category. Where a guideline, and therefore a defined set of offence categories, did not exist, it was difficult to provide an indication of the level of harm and culpability involved in a manner that was consistent amongst all judges. Therefore, where a guideline did not exist, the judge was requested to tick "no guideline" on the form.

The offence category indicated on the CCSS forms was based on the judge's assessment before any other factors were taken into account. Once other factors were taken into account, the final sentence outcome may have moved into the recommended range of outcomes indicated for a different offence category.

## A.5 Aggravating and mitigating factors

Once the judge has made an assessment of the level of harm and culpability involved in an offence, they will then take into account other factors of the case that provide the context to how and why the offence was committed. These other factors can **aggravate** the sentence, that is, they may suggest that a higher sentence is appropriate (moving it up from the starting point); or they can **mitigate** the sentence, that is, they may suggest a lower sentence is appropriate (moving it down from the starting point). These factors are called **aggravating** and **mitigating factors**. They may be factors that are specific to the crime, or they may be factors that reflect the personal circumstances of the offender. The latter are referred to as **personal mitigation**.

Aggravating factors, for example, might include if the offender:

- committed the offence whilst on bail or on licence;
- attempted to conceal or dispose of any evidence; or
- abused their power or position of trust.

Mitigating factors, for example, might include:

- if the offender shows genuine remorse for the offence; or
- the age or lack of maturity of the offender where it affects their responsibility for the offence.

Not all aggravating and mitigating factors will influence the sentence imposed equally. Some factors will be considered by the sentencing judge to be more or less important to the case or the offender than others which will in turn influence how much the sentence is increased or decreased to take account of these factors.

The CCSS forms recorded any aggravating and mitigating factors that were stated by the judge during sentencing to have influenced the sentence imposed. Although the presence of factors was noted, the forms did not record any measure of how influential the factors were in the case.

## A.6 Recent or relevant previous convictions

The criminal history of an offender, as reflected by the offender's previous convictions, is another possible aggravating factor.

The previous convictions of an offender can provide the judge with a good indication of the offender's criminal background, for example if they have committed a string of similar offences, as well as an indication of how well the offender might respond to a particular type of sentence.

When an offender is convicted of an offence, the prosecution will provide evidence to the court about the previous convictions of that offender. When an offender has one or more previous convictions, the sentencing judge must consider whether to take any of the previous convictions into account and treat them as a factor that serves to increase the sentence imposed.

Not all previous convictions will be taken into account by the judge when determining the sentence. Only where the previous conviction is considered to be "recent" and "relevant", might it be taken into account.<sup>16</sup>

For each sentence, the CCSS forms recorded whether the offender had any previous convictions that influenced the sentence imposed, and if so, how many of these the judge decided to take into account. An offender who is reported to have no previous convictions that influenced the sentence imposed may, in fact, have some previous convictions. However, either many years have elapsed since those convictions or they are so different to the offence for which the offender is now being sentenced that they are not considered to have any bearing on it.

## A.7 Pleading guilty

The law states that where an offender enters a guilty plea, the court, when deciding what sentence to pass, must take into account the following:<sup>17</sup>

- the stage in the proceedings at which the offender indicated their intention to plead guilty; and
- the circumstances in which the indication was given.

A guilty plea will normally result in a reduction to the sentence that the offender would have otherwise received. Where a guilty plea is made, the definitive guideline: *Reductions in sentence for a guilty plea* issued by the Sentencing Guidelines Council (SGC)<sup>18</sup> provides guidance to courts on the appropriate reduction.

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<sup>16</sup> s.143(2) Criminal Justice Act 2003

<sup>17</sup> s.144 Criminal Justice Act 2003

<sup>18</sup> Predecessor body of the Sentencing Council.

The guidelines recommend a level of reduction that is gauged on a sliding scale ranging from a recommended one third (where the guilty plea was entered at the first reasonable opportunity), to a recommended one quarter (where a trial date has been set), to a recommended one tenth (for a guilty plea entered at the 'door of the court' or after the trial has begun).

The stage at which the first reasonable opportunity to plead guilty arises will depend on the circumstances of the case. The SGC guideline provides advice on the stage that is considered to be the first reasonable opportunity for each type of case.

The reduction principle takes account of the fact that a guilty plea avoids the need for a trial, shortens the gap between charge and sentence, saves considerable cost, and, where the plea is entered early, saves victims and witnesses from the concern about giving evidence.

There is a presumption that the recommended reduction will be given unless there are good reasons for a lower amount. However, it is important to remember that, as with any other guideline, there may be circumstances where it is in the interests of justice to depart from the guideline recommended approach. For example, an exception may be granted for cases where the prosecution case is overwhelming, in which case it may not be considered appropriate to give the full recommended level of reduction.

For those offenders who pleaded guilty, the CCSS recorded both the stage at which the plea was made and the relevant reduction applied to the sentence for the guilty plea. As the first opportunity at which an offender can enter a plea differs depending on the type of case, the form also recorded whether the stage indicated was the first opportunity that the offender had to enter a plea.