

Crown Court Sentencing Survey
Annual Publication

January to December 2013
England and Wales

First published 26 June 2014

Revised 3 February 2015

Acknowledgements

The Council is very grateful to the Crown Court judges at all Crown Court centres in England and Wales for their participation in this ongoing survey. Without their continued dedication, this new and valuable source of information on sentencing practice would not be available.

The Council would also like to express its gratitude to the court staff involved in the survey for their patience, cooperation and assistance, especially at times when changes have had to be made to the survey and its administration.

We continue to welcome the feedback of users and other interested parties on this publication and the statistics presented in it.

Whether you found this publication interesting, useful or difficult to understand, or if you have suggestions for alternative methods of providing the data collected by the Crown Court Sentencing Survey, we would like to hear from you. We also welcome questions from users who wish to find out more about the survey and the data it collects. Contact details are provided below.

Contact us

General Enquiries

Tel: 020 7071 5793

Email: research@sentencingcouncil.gsi.gov.uk

Responsible Statistician

Trevor Steeples

020 7071 5793

Press Office Enquiries

Nick Mann

0207 071 5792

Further information on the Sentencing Council and its work can be found at:

www.sentencingcouncil.org.uk

Table of contents

Executive summary	2
<i>Factors indicating the level of harm and culpability</i>	2
<i>Offence category or level</i>	3
<i>Aggravating and mitigating factors.....</i>	3
<i>Guilty pleas.....</i>	5
<i>Departures from the Sentencing Council guidelines.....</i>	5
1 Introduction	6
1.1 <i>Background to the Crown Court Sentencing Survey</i>	6
1.2 <i>Survey response rates</i>	8
1.3 <i>National Level Totals.....</i>	8
2 Factors indicating the level of harm and culpability	10
2.1 <i>Assault Offences</i>	11
2.2 <i>Burglary Offences.....</i>	14
3 Offence category (level of harm and culpability).....	17
3.1 <i>Distribution of offence categories over offence form type.....</i>	17
3.2 <i>Effect of category of offence on the type of sentence passed</i>	20
3.3 <i>Effect of category of offence on sentence severity for custodial sentences</i>	21
4 Aggravating and mitigating factors.....	23
4.1 <i>Distribution of number of aggravating and mitigating factors taken into account</i>	23
4.2 <i>Effect of number of aggravating and mitigating factors on severity for custodial sentences</i>	25
4.3 <i>Effect of aggravating and mitigating factors on custodial sentences</i>	26
4.4 <i>Previous convictions taken into account.....</i>	29
5 Pleading guilty to the offence	33
6 Departures from Sentencing Council Guidelines	35
6.1 <i>Assault offences.....</i>	36
6.2 <i>Burglary offences</i>	38
6.3 <i>Drug offences.....</i>	39

Executive summary

The Sentencing Council for England and Wales began the Crown Court Sentencing Survey on 1 October 2010. It collects information directly from judges on the factors taken into account when they impose a sentence at the Crown Court.

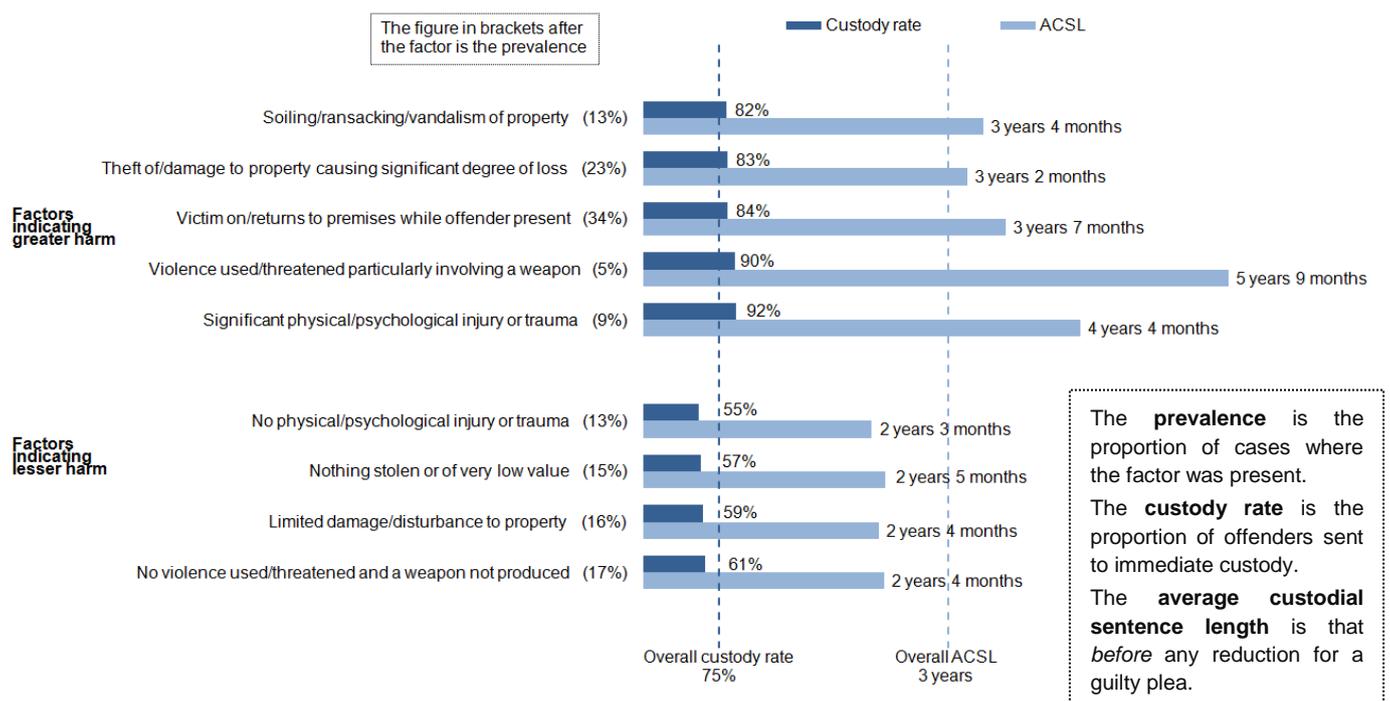
This publication presents the findings of the survey for sentences passed in the Crown Court during 2013. For the first time, the publication includes data on how the initial categorisation of the harm caused and the culpability of the offender is made by judges at step one of the guidelines. It also shows the impact of the offence category, aggravating and mitigating factors and pleading guilty on the sentence imposed. Finally, it considers the proportion of sentences that were within the guideline offence range (the full spectrum of permissible sentence outcomes across all offence categories) for sentences passed in 2013 under Sentencing Council definitive guidelines.

Factors indicating the level of harm and culpability

The first decision that a judge will make when sentencing an offender is the offence category (or level) which is a measure of the seriousness of the offence. This is determined by the harm caused and the culpability of the offender, when compared to other offences of the same type.

Sentencing Council definitive guidelines for assault and burglary offences include an exhaustive list of factors that are used to determine the category of harm and culpability. The effect of factors indicating greater harm or factors indicating higher culpability was that offenders were more likely to be sent to prison and for longer. Conversely, the effect of factors indicating lesser harm or those indicating lower culpability was that offenders were less likely to be sent to prison, and if they were, it was generally for a shorter time. For example, the effect of factors indicating the level of harm for burglary offences is shown in Figure 1.

Figure 1: Factors indicating the level of harm, by prevalence, custody rate and average custodial sentence length (ACSL) for burglary offences, Crown Court, 2013

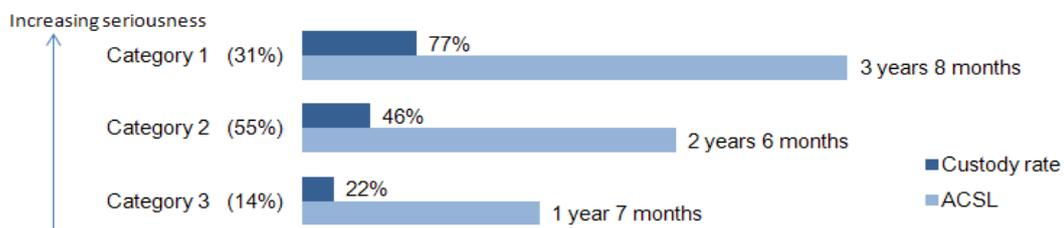


Offence category or level

Following an assessment of the level of harm and the culpability, the judge can decide on the offence category (or level). Category 1 (level 1) offences are the most serious and involve a high level of harm and culpability. Category 2 (level 2) offences are less serious than category 2 (level 2) offences and so on.

Across all offence types, an offender being sentenced for a category 1 offence was more likely to be sentenced to immediate custody and for a longer period than an offender who committed a similar offence but caused less harm and was shown to be less culpable (a category 2, or lower, offence). Figure 2 shows the effect on custodial sentences passed for cases of assault and public order where the category of offence was completed. This pattern, where more serious categories attract harsher sentences, confirms that courts are following the principle of proportionality in sentencing.

Figure 2: Category of offence for assault and public order offences, by proportion of sentences, custody rate and average custodial sentence length (ACSL), Crown Court, 2013

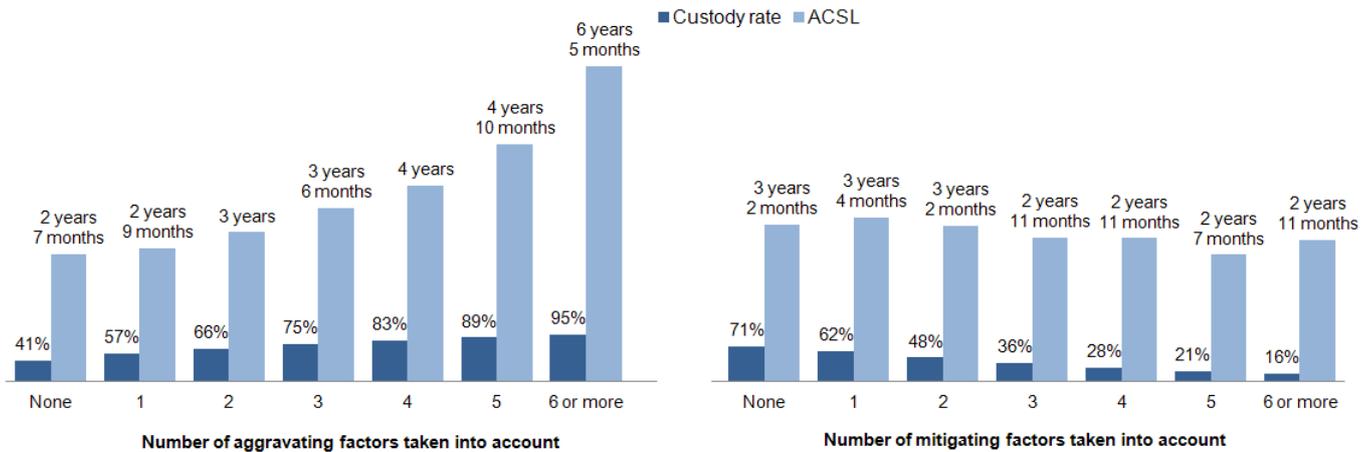


Aggravating and mitigating factors

Aggravating and mitigating factors are other factors relating to the case or the offender that provide the context to how and why the offence was committed. Aggravating factors increase seriousness and suggest that a more severe sentence is appropriate while mitigating factors reduce seriousness or reflect personal mitigation and suggest that a less severe sentence is appropriate.

A case with many aggravating factors is dealt with more severely than a case with a few aggravating factors. These offenders are more likely to be sent to prison and more likely to be sent there for longer. Conversely, offenders with many mitigating factors taken into account in their case are less likely to be sent to prison. However, if they are sent to prison, there is not much variability in the time they spend there, compared to cases with fewer factors. These results are shown in figure 3.

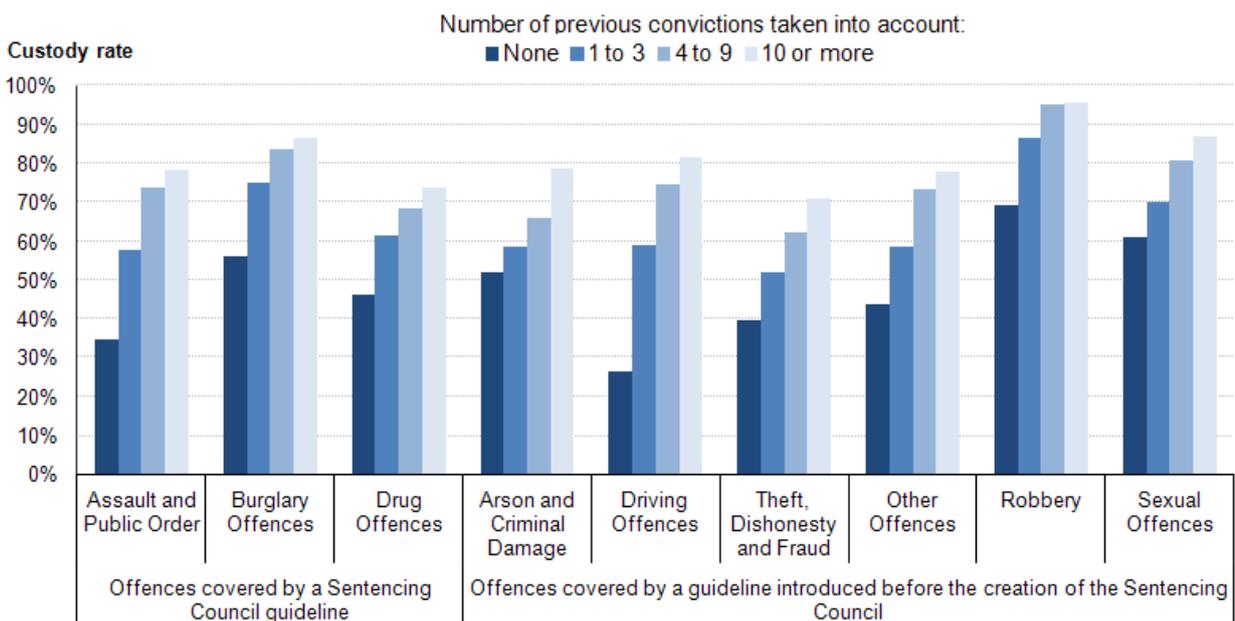
Figure 3: Number of aggravating and mitigating factors taken into account (excluding presence or absence of previous relevant convictions) across all offences, by custody rate and average custodial sentence length (ACSL), Crown Court, 2013



A specific aggravating factor, the number of recent and relevant previous convictions, is also considered in more detail. Generally, the likelihood of this factor being taken into account depends on the type of offence that is being sentenced. Burglary, robbery and driving offences are more likely to have recent and relevant previous convictions that influence their sentence, whereas offenders being sentenced for sexual offences are much less likely to have previous convictions that are recent and relevant enough to be taken into account.

Where an offender does have recent and relevant previous convictions, that offender is more likely to be sentenced to immediate custody, with this likelihood increasing as the number of previous convictions increases. This relationship is shown in figure 4. In general, where an offender already had at least one recent and relevant previous conviction, any further ones taken into account by the judge had less of an impact on the likelihood of being sent to immediate custody.

Figure 4: Number of previous convictions taken into account, by offence type and custody rate, Crown Court, 2013



Guilty pleas

Defendants can enter a guilty plea at various stages in the court process. The court must take account of this and if one is entered, it will usually reduce the severity of the sentence. The reduction applied will depend on the stage of the process at which the plea was made and the circumstances in which the plea was made. In general, the earlier the plea is entered, the greater the reduction in sentence.

In 2013, 90 per cent of offenders sentenced at the Crown Court pleaded guilty to the offence. Most frequently, where a guilty plea was made, the plea was entered at an early stage of the proceedings, with 81 per cent of offenders pleading guilty either before or at the Plea and Case Management Hearing (PCMH). Where a plea was entered at this stage, 76 per cent were granted the highest level of reduction. A further 20 per cent were granted a reduction of between 21 and 32 per cent; and 4 per cent were granted a reduction of 20 per cent or less.

Departures from the Sentencing Council guidelines

Courts are under a legislative duty to impose a sentence which is within the offence range specified by sentencing guidelines, unless it is in interests of justice to depart from this; they are not required to stay within the relevant category range defined by the guideline. The offence range is the full spectrum of sentences over all offence categories.

The survey results show that in 2013, for offences covered by the guideline, *Assault, Definitive Guideline*, 97 per cent of sentences fell within the relevant offence range, 1 per cent fell below and 2 per cent fell above.

For offences covered by the guideline *Burglary Offences, Definitive Guideline*, 97 per cent of sentences for offences covered by the guideline fell within the relevant offence range, less than 0.5 per cent fell below and 3 per cent fell above.

For offences covered by the guideline *Drug Offences, Definitive Guideline*, 98 per cent of sentences for offences covered by the guideline fell within the relevant offence range, 1 per cent fell below and 1 per cent fell above.

Trevor Steeples, Head of Analysis and Research, Office of the Sentencing Council

Steve Ellerd-Elliott, Head of Profession for Statistics, Ministry of Justice and its Arms Length Bodies

1 Introduction

The Crown Court Sentencing Survey (CCSS) began on 1 October 2010. It collects information directly from judges on the factors taken into account when they impose a sentence at the Crown Court.

The survey was primarily designed to collect the information required by the Council to fulfil its legislative duty under section 128(1) of the Coroners and Justice Act 2009, to “monitor the operation and effect of its sentencing guidelines”. However, it has also been recognised as an important source of new data to supplement the range of criminal justice data already available and to improve understanding of how sentences are determined.

This is the fourth publication of data from the survey, and provides information on sentences passed at Crown Courts in England and Wales during 2013. For the first time, information regarding factors used to determine the level of harm and culpability and hence the offence category for offences sentenced under Sentencing Council guidelines has been included.

1.1 Background to the Crown Court Sentencing Survey

The survey is a census, not a sample survey. For every *new* criminal case sentenced at the Crown Court, the sentencing judge is expected to complete a survey form. When completing the form, the judge is required to consider only the most severe offence or **principal offence** being sentenced on that occasion. Where the sentence is not a new sentence, the judge is not required to complete a form. For example, if the sentence resulted from the breach of a previous sentence, this sentence would not be new and therefore a form would not be completed.¹

During 2013, the survey data were collected using ten different **offence type** forms:

- arson and criminal damage;
- assault and public order²;
- burglary²;
- driving offences;
- drug offences²;
- offences causing death;
- robbery and assault with intent to rob;
- sexual offences;
- theft, dishonesty and fraud; and
- other offences.

Only one form is completed for each offender sentenced, depending on the nature of the principal offence being sentenced. The different offence type variations reflect the fact that some of the factors taken into

¹ There are a limited number of court orders, which if breached, do receive a new sentence. In these cases, a form would be completed. Further details are provided in the guidance notes on the back of the survey forms, which are available here <http://www.sentencingcouncil.org.uk/publications/?type=publications&s=form&cat=crown-court-sentencing-survey>.

² For the offences covered by these three 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.

account will be specific to the type of offence committed; therefore, each offence type has its own form. Links to copies of the forms are available on the Council's website.³

To limit the burden placed on judges, each form consists of a single sheet of paper. Therefore, not all considerations will be captured by the survey. The key areas covered are:

- the **offence category** or **level** (a measure of the **harm** caused and the blameworthiness, or **culpability**, of the offender);
- the number of recent and relevant **previous convictions** of the offender;
- **aggravating** and **mitigating** factors present in the case; and
- any reduction given for a **guilty plea**, where a guilty plea was entered.

For definitions and further details on each of the factors covered by the survey, please refer to the supplementary documents, *A Guide to CCSS Statistics* available on the Council's website.

When considering the results presented, it is important to note that **every criminal case is unique**. There may be considerations other than those expressed here or collected in the Crown Court Sentencing Survey that have also impacted on the sentence.⁴ 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. Whilst the survey provides a detailed picture of cases sentenced at the Crown Court, it will not capture every factor considered by a judge when sentencing. What it does do is to shed light on the key considerations at sentencing and their influence on the sentence imposed.

The results presented in this publication have been split into the following sections:

Section 2: Factors indicating the level of harm and culpability

Section 3: Offence category (level of harm and culpability)

Section 4: Aggravating and mitigating factors present in the case

Section 5: Pleading guilty to the offence

Section 6: Departures from Sentencing Council guidelines

The publication also includes separate annexes containing more detailed information. Readers who are less familiar with the sentencing process should refer to *A Guide to CCSS Statistics* (annex A) which provides background information on the factors that a judge will consider when deciding on the appropriate sentence. The *Quality and Methodology Note* (annex B) provides information on the quality assurance process and how the data were analysed to produce the results. In addition, Excel data tables of the results presented have also been produced. Both annexes and the supplementary tables are available on the Council's website⁵.

To enable others to use the data to conduct further research on sentencing and sentencing practice, anonymised record level datasets have been published on the website covering data for 2011 and 2012. The record level dataset for 2013 will be made available on 24th July 2014.

The rest of this section covers a summary of survey response rates and national level totals.

³ <http://www.sentencingcouncil.org.uk/publications/?type=publications&s=form&cat=crown-court-sentencing-survey>

⁴ For example, the requirements attached to a community order might differ depending on the opinion of the court as to which are the most suitable for the offender.

⁵ <http://www.sentencingcouncil.org.uk/analysis-and-research/crown-court-sentencing-survey/annual-2013-results/>

1.2 Survey response rates

Across all Crown Court locations in England and Wales in 2013, a survey form was completed for 55,341 sentences. Of these, it has been possible to confirm that 51,744 forms (94 per cent) relate to the principal offence through comparison with the administrative database, CREST.⁶ The remaining 6 per cent have been excluded from the results presented as it is not possible to say whether these forms relate to the principal offence.

In 2013, there were 86,129 sentences passed for principal offences at the Crown Court. The overall national response rate is therefore 60 per cent⁷. However, response rates by Crown Court vary; about 70 per cent of courts having a response rate of 50 per cent or more. Further information on the survey response rates, including the distribution across individual court locations is available in annex B.

Although there is variation in the response rates amongst courts, the sample of forms returned through the survey does provide a good representation of the national picture of sentencing at the Crown Court in 2013. This has been confirmed by comparing outputs from the survey to information provided by the Ministry of Justice on the full population of sentences passed at the Crown Court in England and Wales. Further information is provided in annex B.

1.3 National Level Totals

Table 1.1 shows how the national level total would have been distributed across the different form types had a form been returned for every sentence passed at the Crown Court in 2013. Figures in this table have been rounded to the nearest 100.

Table 1.1: National level totals in the Crown Court by form type, 2013

Form type	Number	Proportion
Arson and Criminal Damage	1,500	2%
Assault and Public Order	18,400	21%
Burglary Offences	10,800	13%
Drug Offences	15,700	18%
Driving Offences	3,100	4%
Theft, Dishonesty and Fraud	15,500	18%
Other Offences	8,600	10%
Offences Causing Death	1,200	1%
Robbery	5,000	6%
Sexual Offences	6,300	7%
All Offences	86,100	100%

These totals were estimated by identifying the cases on CREST without a corresponding CCSS record and allocating these to the appropriate form type. This is a change from the probability weighting approach used

⁶ CREST (Crown Court Electronic Support System) is the case management system used by the Crown Court for tracking case progression.

⁷ This is based on the 94 per cent of survey forms returned for which a match could be obtained. Including the unmatched 6 per cent of sentences provides a national response rate of 64 per cent.

in the 2012 publication back to the simpler methodology used in the 2011 publication. This change was made as the benefits from the more complex approach did not fully justify the extra resources required. See annex B for further information.

2 Factors indicating the level of harm and culpability

Definitive guidelines introduced by the Sentencing Council set out a step-by-step decision-making process for sentencing offenders. The first step of this process is to determine the offence category. The offence category is a measure of the seriousness of the offence and has the most significant bearing on the type of sentence passed and its length. It is determined by two main parameters⁸:

1. the **harm** caused, or potentially caused, by the offender; and
2. the **culpability** of the offender, or how much the offender was to blame for the offence committed.

Definitive guidelines for assault and burglary include an exhaustive list of factors that are used to assess the level of harm and culpability and hence the offence category. These factors considered at the first stage of the decision-making process are referred to as step 1 factors.

This section will show how step one factors affect the likelihood and length of custodial sentences – the most severe type of sentence available. Not all factors listed in the respective guideline have been included. To avoid sample size issues, only factors indicated in at least 2 per cent of survey forms have been included.⁹ Where presented, inferences for factors present in less than 5 per cent of forms should be treated with caution.

Drug offences, though also covered by a Sentencing Council definitive guideline have not been included as they use a different methodology for assessing harm and culpability. They are instead covered later in section 3. This section also does not include offences sentenced under guidelines introduced before the creation of the Sentencing Council, as they do not include an exhaustive list of step one factors. It also does not cover factors used to increase or decrease the sentence after the assessment of seriousness. These are covered in section 4 and apply to all offences.

In this section, data is presented on custody rates and average custodial sentence lengths for various individual step one factors. However, several step one factors will often be applicable in a given case. The statistics presented are calculated across all cases where the step one factor is present, whether it occurred in isolation or in combination with a number of other step one factors. Therefore, the statistics should not be interpreted as showing the causal effect of each step one factor.

⁸For some offences, only one of the parameters, harm or culpability, is used to determine the category. For example, in cases of theft, the categories are based purely on an assessment of the harm caused.

⁹For a complete list of all the possible factors, refer to the relevant guidelines at <http://www.sentencingcouncil.org.uk/publications/?type=publications&s=&cat=definitive-guideline&topic=&year=> or the survey forms, at <http://www.sentencingcouncil.org.uk/publications/?type=publications&s=form&cat=crown-court-sentencing-survey>.

2.1 Assault Offences

Effect of factors indicating level of harm on sentences for assault

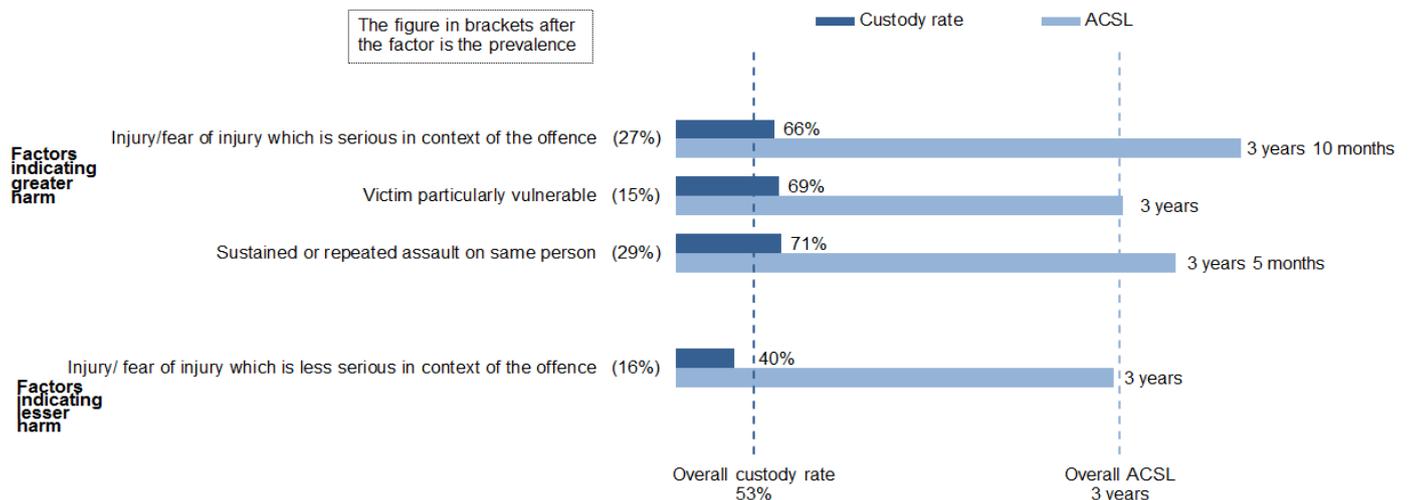
Summary Box 2.1: What is the effect of factors used to assess harm on sentences for assault?

In general, when factors indicating **greater harm** were taken into account, offenders were **more** likely to be sent to prison and **more** likely to be sent there for longer, compared to assault offences in general.

There is only one factor indicating lesser harm in the assault guideline. When this factor was present, offenders were **less** likely to go to prison. However, for those offenders that were sent to prison, this factor did not have a noticeable effect on the sentence length (**figure 2.1**).

Figure 2.1 shows the relative importance of factors indicating the level of harm for offences covered by the definitive guideline¹⁰. The figure provides the proportion of sentences with each factor, in brackets after individual factors. For each factor, it also shows the proportion of offenders sent to immediate custody (the custody rate) and the average custodial sentence length (ACSL) *before* any reduction for a guilty plea. The custody rate provides a measure of how likely an offender is to be sent to prison while the ACSL measures how long, on average, their sentence will be. Each group of factors has been arranged in order of increasing custody rate. To provide more context, the figure also includes the custody rate and ACSL over all assault offences covered by this guideline.

Figure 2.1: Assault definitive guideline offences: Factors indicating level of harm by prevalence, custody rate and average custodial sentence length (ACSL), Crown Court, 2013



¹⁰ 73 per cent of sentences completed on the CCSS assault and public order form were passed under the Sentencing Council's *Assault Definitive guideline*. For a list of these offences see http://www.sentencingcouncil.org.uk/wp-content/uploads/Assault_definitive_guideline_-_Crown_Court.pdf.

The figure shows that when factors indicating greater harm were taken into account, custody rates were higher than the overall rate for these offences. Custody rates ranged from 66 per cent for “injury/fear of injury which is serious in context of the offence” to 71 per cent for “sustained or repeated assault on same person”, the most common factor (present in 29 per cent of these cases). They were all higher than the overall custody rate for these offences (53 per cent).

In addition, when these factors were present, average custodial sentence lengths were typically longer than the average length for these offences. For example, cases with “injury/fear of injury which is serious in context of the offence” had the longest ACSL of 3 years 10 months. This was 10 months longer than the overall ACSL for these offences.

The only factor used to indicate lesser harm is “injury/fear of injury which is less serious in the context of the offence”, present in just 16 percent of cases. Cases with this factor had a custody rate of 40 per cent, which was 25 per cent less than the overall custody rate for these offences. However, cases with this factor had the same ACSL as the overall ACSL for these offences.

Effect of factors used to indicate level of culpability on sentences for assault¹¹

Summary Box 2.2: What is the effect of factors used to indicate level of culpability on custodial sentences for assault?

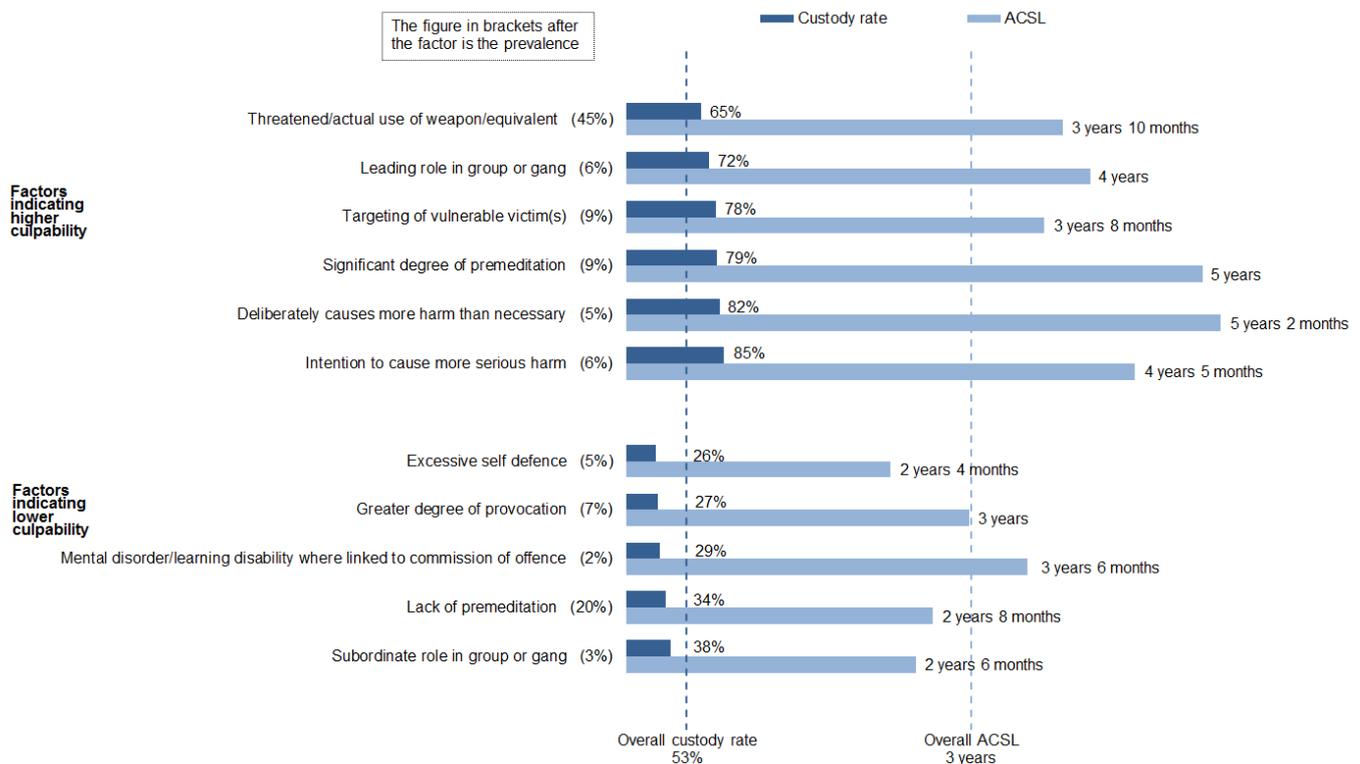
Where factors indicating **higher culpability** were taken into account, offenders were **more** likely to be sent to prison and **more** likely to be sent there for longer, compared to assault offences in general. These factors tended to produce more severe custodial sentences than greater harm factors.

However, where factors indicating **lesser culpability** were taken into account, offenders were **less** likely to be sent to prison, and in general, **more** likely to be sent there for a shorter time, both compared to assault offences in general and cases with higher culpability factors present (**figure 2.2**).

Figure 2.2 shows information for the factors indicating the level of culpability for assault offences.

¹¹ There are two types of factors used to assess culpability; **statutory aggravating factors** are those as set out in law, which must be taken into account, and **other aggravating factors** which are discretionary. Assault cases with statutory aggravating factors were not very common. As there were so few cases, these factors have not been analysed in this section.

Figure 2.2: Assault offences: Factors indicating the level of culpability by prevalence, custody rate and average custodial sentence length (ACSL), Crown Court, 2013



Custody rates ranged from 65 per cent for cases where there was “threatened/actual use of [a] weapon/equivalent” (the most common of these factors) to 85 per cent for those where there was “intention to cause more serious harm”. These were all higher than the overall custody rate for these offences.

Similarly, average custodial sentence lengths were substantially longer when these factors were present, ranging from 3 years 8 months for cases in which there was “targeting of vulnerable victims” to 5 years 2 months for cases where there was “deliberately causes more harm than necessary”. This compares to the overall custodial sentence length of 3 years for these offences.

Compared to figure 2.1, the result in figure 2.2 shows that in general, when factors indicating higher culpability were taken into account, offenders were more likely to be sent to prison and for a longer time than when factors indicating greater harm were taken into account.

In contrast, the presence of factors indicating lower culpability resulted in lower custody rates compared to the overall custody rate of 53 per cent. They ranged from 26 per cent for “excessive self defence” to 38 per cent for “subordinate role in group or gang”. “Lack of premeditation” the most common of these factors present in 1 in 5 cases, had a custody rate of 34 per cent.

The pattern for ACSL was not clear-cut. Most factors indicating lower culpability had a *shorter* ACSL compared to the overall ACSL for these offences, with the shortest ACSL of 2 years 4 months when “excessive self defence” was taken into account. The most noticeable exception was “mental disorder/learning disability where linked to commission of offence” which had an ACSL of 3 years 6 months. This was 6 months *longer* than the overall ACSL for these offences. However, this factor was only present in 2 per cent of cases and it was still shorter than any of the higher culpability factors.

2.2 Burglary Offences

Effect of factors used to assess the level of harm on sentences for burglary

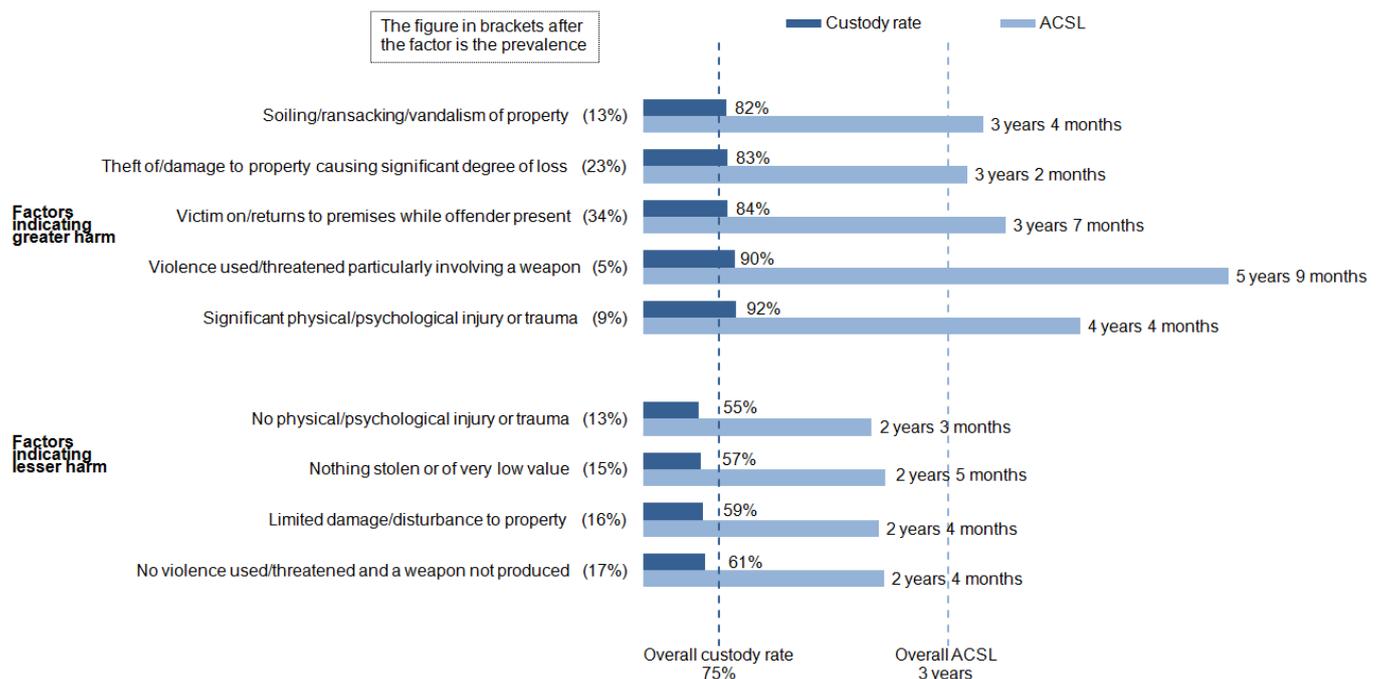
Summary Box 2.3: What is the effect of factors used to assess the level of harm on sentences for burglary?

The effect of factors indicating greater harm on sentences for burglary was similar to that for assault offenders; more offenders were sentenced to prison and for longer.

Likewise, for factors indicating lesser harm, the effect was that offenders were less likely to be sent to prison. However, in contrast to assault offences, they were also on average sent there for a shorter time compared to the overall for burglary offences covered by the guideline (**figure 2.3**).

Figure 2.3 shows the relative importance of factors indicating the level of harm for burglary offences covered by the definitive guideline¹².

Figure 2.3: Burglary offences: Factors indicating the level of harm by prevalence, custody rate and average custodial sentence length (ACSL), Crown Court, 2013



The figure shows that when factors indicating greater harm were taken into account, custody rates were higher and average custodial sentences were longer than overall.

¹² 98 per cent of offences completed on the CCSS burglary offences form were sentenced under the Sentencing Council's Burglary definitive guideline. For list of these offences see http://www.sentencingcouncil.org.uk/wp-content/uploads/Burglary_Definitive_Guideline_web_final.pdf.

Custody rates for factors indicating greater harm ranged from 82 per cent for “soiling/ransacking/vandalism of property” to 92 per cent for “significant physical/psychological injury or trauma”. The custody rate for the most common of these factors, “victim on/returns to premises while offender present” (considered in 34 per cent of cases) was 84 per cent. In all cases, custody rates were higher than the overall custody rate for these offences (which was 75 per cent).

When these factors were considered, average custodial sentence lengths were also typically longer than the average length for these offences, with the shortest being 3 years 2 months for “theft of/damage to property causing significant degree of loss”. In particular, offences with “violence used/threatened particularly involving a weapon” had substantially longer ACSL. It was nearly double that of the overall ACSL for these offences, although it was only taken into account in 5 per cent of cases.

Unlike other factors considered so far, factors indicating lesser harm were taken into account more uniformly, each present in between 13 and 17 per cent of burglary offences. Custody rates and ACSL for each factor were all less than the overall average. However, unlike factors indicating greater harm, there was less variability, particularly in ACSLs which were fairly constant at around 2 years 4 months.

Effect of factors indicating the level of culpability on sentences for burglary

Summary Box 2.4: What is the effect of factors used to assess culpability on sentences for burglary?

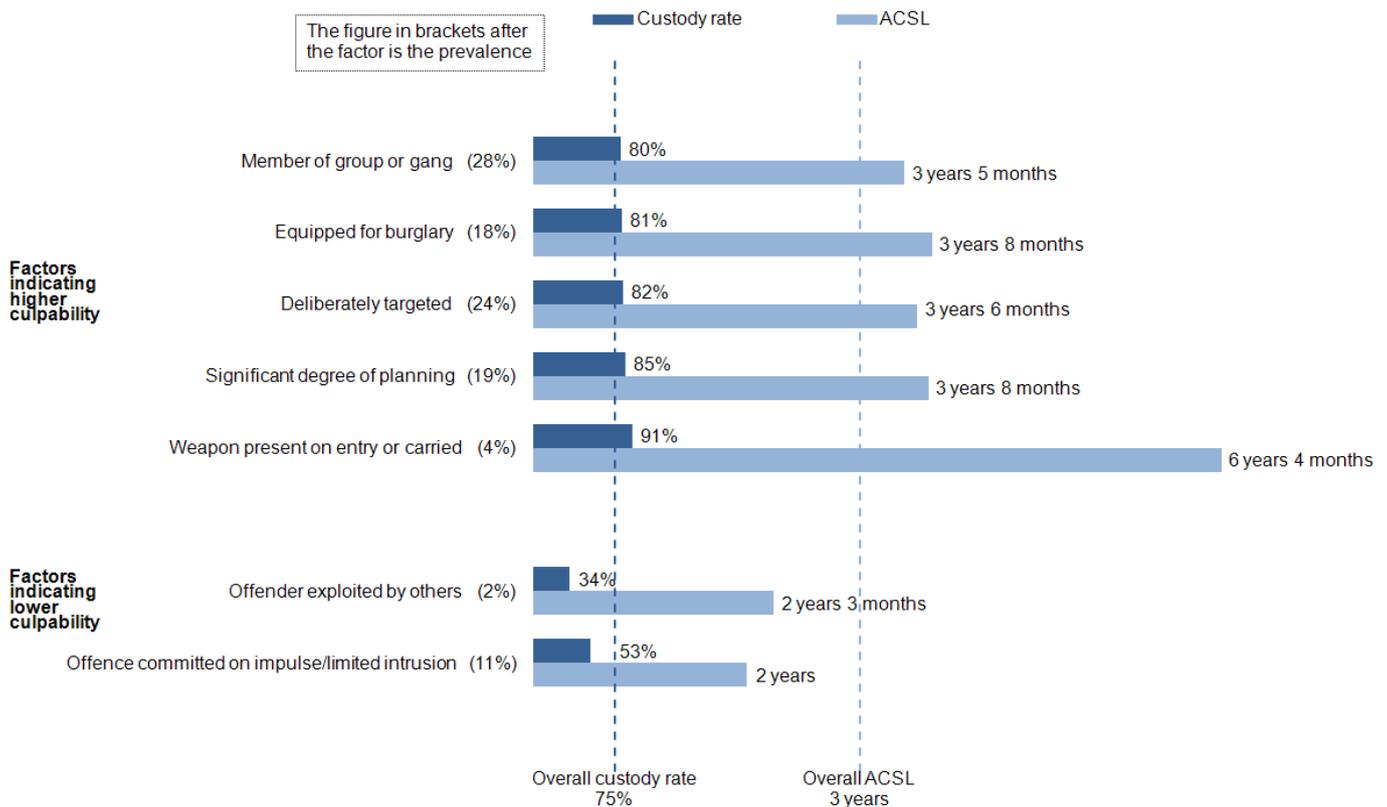
In general, the effect of these factors on sentences for burglary was similar to that for harm factors.

Where factors indicating higher culpability were taken into account, offenders were more likely to be sent to prison and more likely to be sent there for longer. These factors tended to produce similar custodial sentences to factors indicating greater harm.

Where factors indicating lower culpability were taken into account, offenders were less likely to be sent to prison, and more likely to be sent there for a shorter time, both relative to the overall for burglary offences and to factors indicating higher culpability (**figure 2.4**).

Figure 2.4 shows the relative importance of factors taken into account in assessing the level of culpability for burglary offences covered by the definitive guideline.

Figure 2.4: Burglary offences: Factors indicating the level of culpability by prevalence, custody rate and average custodial sentence length (ACSL), Crown Court, 2013



The figure shows that the relationship between custody rate and ACSL for factors indicating the level of culpability was similar to those for the level of harm.

The factor associated with the most severe sentence was “weapon present on entry or carried” which resulted in a custody rate of 91 per cent and ACSL of 6 years 4 months (over twice that of the average). However, this was taken into account in only 4 per cent of cases.

In addition, in comparison with figure 2.3, this figure shows that factors indicating lower culpability had slightly shorter ACSL than those indicating lower harm.

The difference in ACSL for the various types of factors was more noticeable for burglary offences than it was for assault. For example, for burglary offences, the difference between the factor indicating higher culpability that had the shortest ACSL and that of lower culpability with the longest ACSL was 1 year 2 months. This compares to only 2 months for assault offences.

3 Offence category (level of harm and culpability)

Once the levels of harm and culpability have been assessed, the judge can decide on the appropriate category for the offence.

The offence category is a measure of the seriousness of the offence. It measures the scale of seriousness of the offence being sentenced **in comparison to other offences of the same type**. This means it does not give any information about the seriousness of an offence relative to an offence of another 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 drug offence.

For each category, the guideline provides a range of appropriate sentences. Sentencing guidelines introduced before the creation of the Sentencing Council do not refer to explicit categories but instead provide a narrative description to define the level of harm and culpability involved. On those forms relating to older sentencing guidelines, the word “level” is used rather than “category”.

For any specific offence, the most serious cases are categorised as **category 1** (level 1) offences. These relate to offences where a **high level of harm** was caused, or potentially caused, and the offender had a **high level of culpability**. Less serious offences, where lesser harm was caused or the offender had lower culpability, are categorised by a higher category number. Therefore a category 2 assault is considered less serious than a category 1 assault and so on.

The total number of categories available on each offence form will depend on how many categories are defined in the relevant sentencing guideline. Most guidelines have three or four categories; however, some have more, for example some offences in the guideline on fraud have five categories.

This section assesses the seriousness of offences, as measured by the offence category and how this influences the sentence received by an offender.

3.1 Distribution of offence categories over offence form type

Assault and Burglary Offences

Assault and burglary offences each have three offence categories.

Table 3.1 shows how the use of harm and culpability factors determines the offence category for these offences.

Table 3.1: Determining the category of offence from the level of harm and level of culpability for assault and burglary offences

	Higher culpability	Lower culpability
Greater harm	Category 1 (most severe)	Category 2
Lesser harm	Category 2	Category 3 (least severe)

Summary Box 3.1: How “serious” were assault and burglary offences?

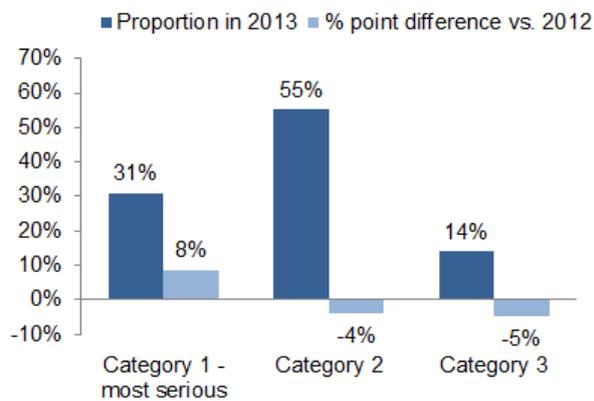
The majority of assault and burglary offences were category 2 offences, with either elements of greater harm and lower culpability or lesser harm and higher culpability.

There has been a slight increase in offence seriousness since 2012, with more of these offences classed as category 1 and fewer as category 3. However, it is too early to determine if this is an emerging trend (**figure 3.1**).

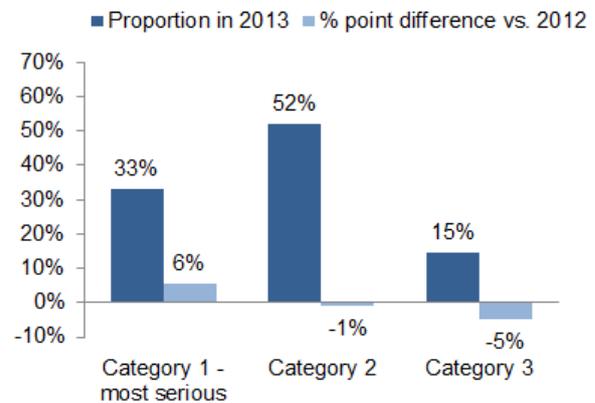
Figure 3.1 shows the distribution of offence categories for assault offences and burglary offences, and also the change since 2012. This includes all offences where the category of offence was completed.

Figure 3.1: Distribution and change in category of offence since 2012 for assault and burglary, Crown Court, 2013

(a) Assault offences



(b) Burglary offences



The figure shows that the distributions are both mound shaped, with over half these offences in category 2 (55 per cent of assault offences and 52 per cent of burglary offences). As shown in table 3.1, these are offences with an element either of greater harm and lower culpability or lesser harm and higher culpability.

Compared to 2012 (the first full year for which these guidelines were in force), there has been a moderate increase in seriousness as measured by the offence category, with more offences falling into category 1 and fewer in category 3. For example, 31 per cent of assault offences were classed as the most serious (category 1), an increase of 8 percentage points over 2012. On the other hand, 14 per cent were in the least serious (category 3), a decrease of 5 percentage points. However, it is too early to determine if this is an emerging trend.

Drug offences

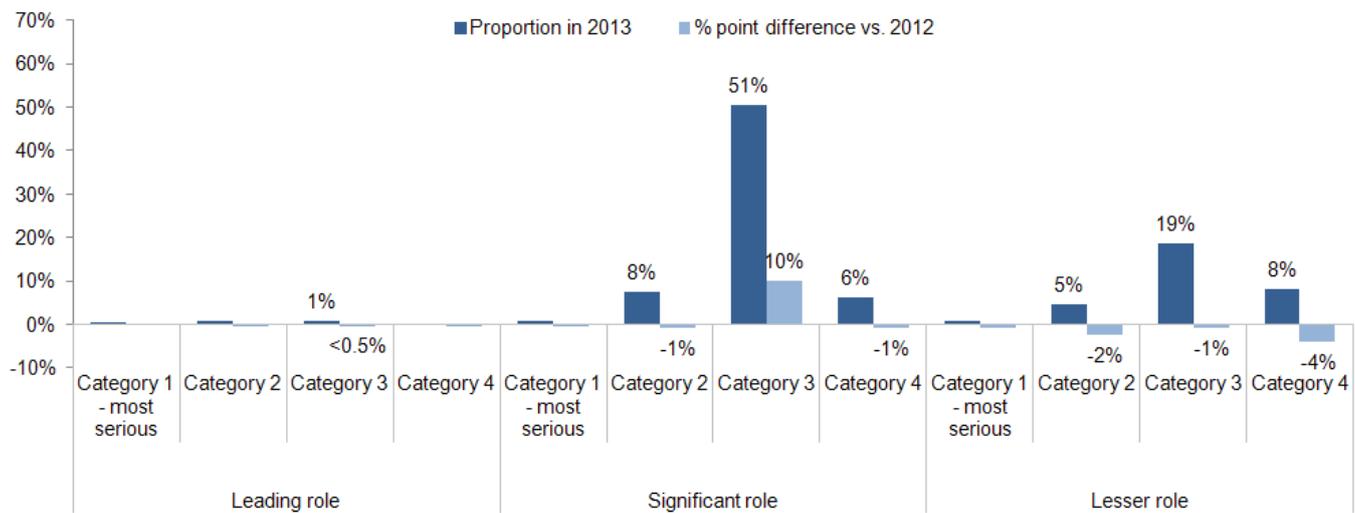
Possession and permitting premises to be used offences use a different methodology to the other drug offences for categorising harm and culpability. They should therefore be considered separately to other drug offences; however, the volume of these offences sentenced at the Crown Court is too small for meaningful analysis by offence category. Though the statutory maximum for these offences allows them to be seen at the Crown Court, the majority are actually sentenced at the magistrates' court. These offences have therefore not been analysed below.

Summary Box 3.2: How “serious” were drug offences other than possession and permitting premises?

The majority of these offences were category 3 offences where the offender played a significant role in the offence. Over half (51 per cent) were in this group, an increase of 10 percentage points over 2012 (**figure 3.2**).

Figure 3.2 shows the offence category and role for offences other than possession and permitting premises.

Figure 3.2: Distribution and change in category and role for drug offences other than possession and permitting premises, Crown Court, 2013



For these offences, the category of harm is determined by the quantity of drugs concerned, where category 1 is the most serious and 4 is the least serious. The culpability of the offender is demonstrated by their role which can either be leading, significant or lesser.

Figure 3.2 shows that for drug offences other than possession and permitting premises, the majority were category 3 offences, where the offender played a significant role. Over half (51 per cent) were in this group, an increase of 10 percentage points over 2012. The second largest group were also category 3 offences but where the offender had a lesser role, comprising about a fifth of offenders (19 per cent).

Similar results for the offence form types covering Sentencing Guidelines Council guidelines are available in the supplementary Excel tables. However, note that with the exception of robbery and sexual offences, the other form types have a high proportion of offences not covered by a guideline. More information on this can be found in annex B.

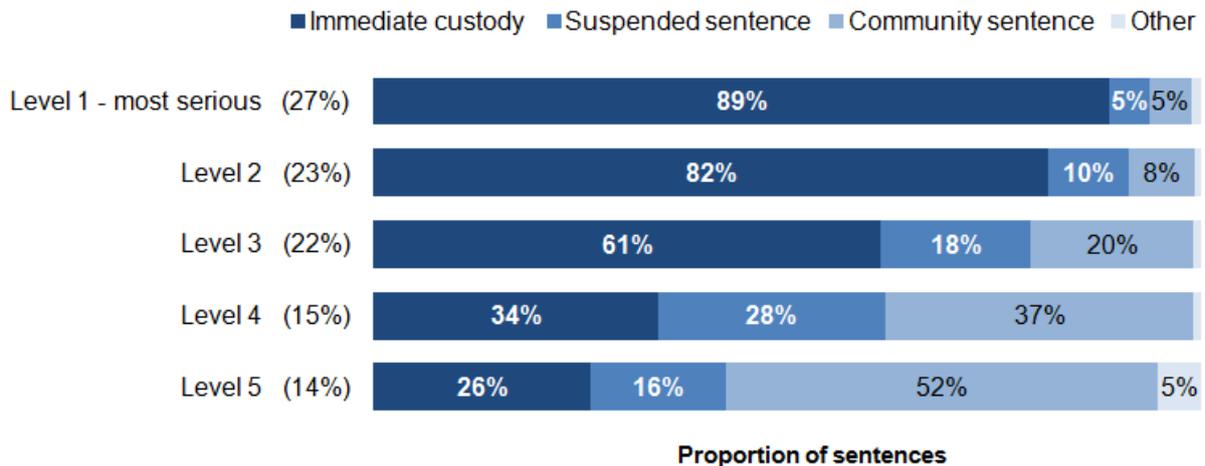
3.2 Effect of category of offence on the type of sentence passed

Summary Box 3.3: How does the category of offence affect the sentence passed?

As expected, the likelihood of a custodial sentence, suspended sentence or community order is related to the seriousness of the offence, as measured by the category or level of offence, with the most serious offences (category 1) more likely to result in a custodial sentence and the least serious offences, more likely to result in a community order.

In general, a higher proportion of offenders with the highest level of culpability and harm (category 1 or level 1) were sentenced to immediate custody than offenders with a lower level of culpability and harm. This is shown for sexual offences in figure 3.3¹³.

Figure 3.3: Level of offence by sentence outcome for sexual offences, Crown Court, 2013



The figure shows that for sexual offences, custodial sentences were the most common outcome for level 1 to level 3 offences compared to community orders for level 4 and level 5 offences. 89 per cent of level 1 offences resulted in a custodial sentence compared to 26 per cent of level 5 offences. In contrast, only 5 per cent of level 1 offences resulted in a community order, compared to 52 per cent of level 5 offences. It seems like the pattern is not strictly followed for suspended sentences as there are more of these for level 4 than for level 5 offences, the least serious category. However, it is important to note that a suspended sentence is a prison sentence and it is only used for offences which are of such severity that they pass the custody threshold. With this in mind, it can be seen that the total proportion of custodial sentences (immediate custody and suspended sentences), also increases as the offence seriousness increases.

Similar results for the offence form types covering the other guidelines are available in the supplementary Excel tables available at <http://www.sentencingcouncil.org.uk/analysis-and-research/crown-court-sentencing-survey/annual-2013-results/>.

¹³ 14 per cent of sentences where this information was completed on the CCSS sexual offences form were classed as not falling under a sentencing guideline.

3.3 Effect of category of offence on sentence severity for custodial sentences

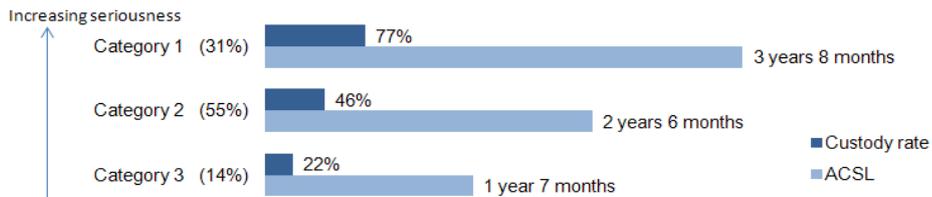
Summary Box 3.4: How does the category of offence affect the severity of custodial sentence passed?

An offender being sentenced for an offence involving a **high level** of harm and **high level** of culpability (category 1 offence) is **more** likely to be sentenced to immediate custody, for a **longer** period than an offender who committed a similar offence, but caused less harm and is shown to be less culpable for the offence (**figure 3.4**).

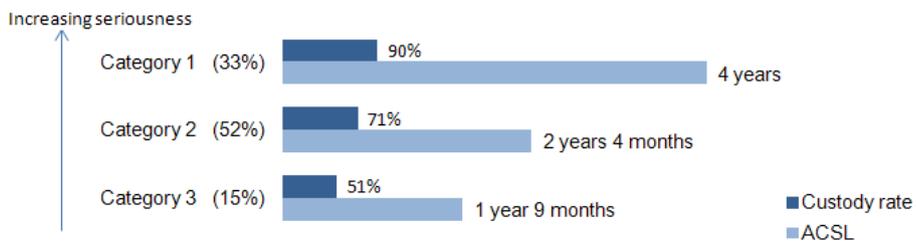
Figure 3.4 shows the relationship between the severity of the custodial sentence passed, as measured by the proportion of offenders sent to immediate custody (the custody rate) and the average custodial sentence length (ACSL) *before* any reduction for a guilty plea, and the level of harm and culpability, as reflected by the offence category, for assault, burglary and drug offences other than possession and permitting premises.

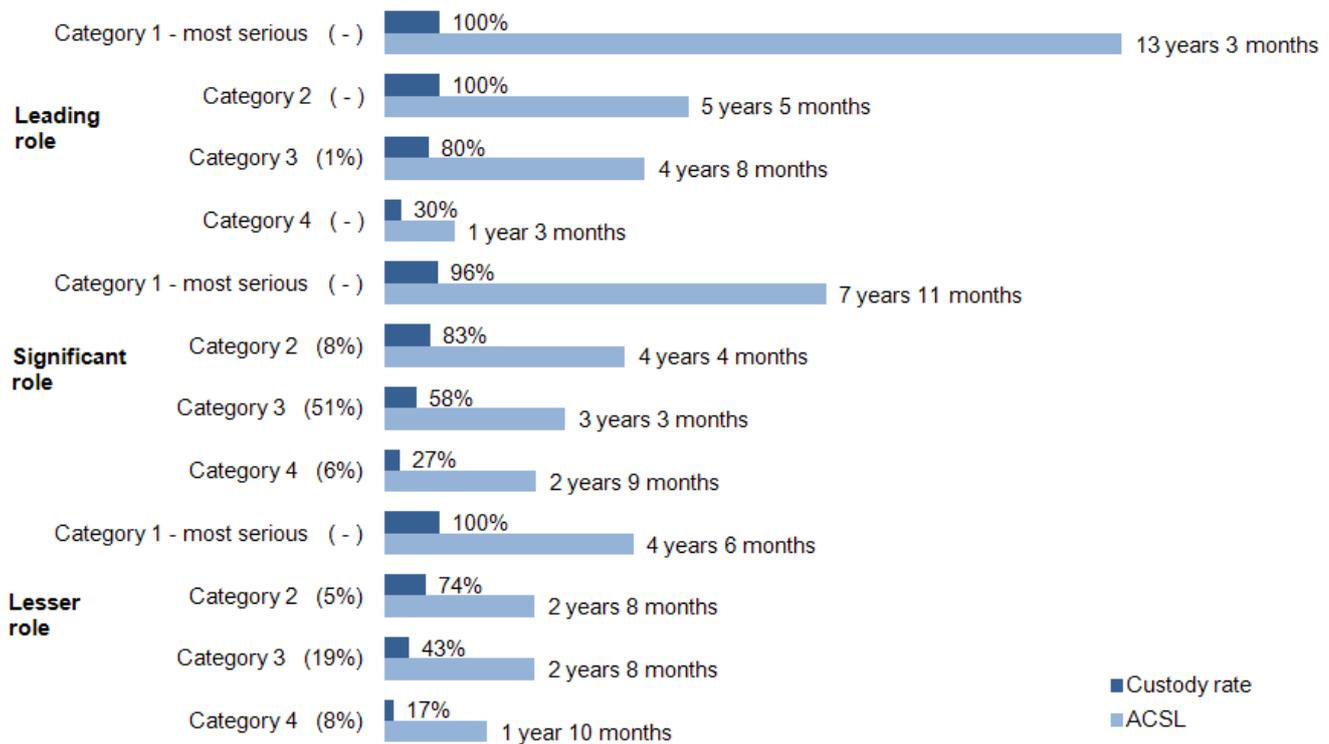
Figure 3.4: Category of offence by proportion of sentences, custody rate and average custodial sentence length (ACSL), Crown Court, 2013

(a) Assault and public order offences



(b) Burglary offences



(c) Drug offences other than possession and permitting premises to be used^(a)

(a) Due to the small volumes, treat inferences for categories with less than 5 per cent of cases with caution.

There is a clear relationship between the severity of the sentence imposed and the level of harm and culpability, as reflected by the offence category. Custody rates are higher and ACSLs are longer for offences involving a high level of harm and high level of culpability compared to similar offences, with less harm caused and where the offender is shown to be less culpable for the offence.

For example, for offences of assault and public order, 77 per cent of cases in the highest category were sent to immediate custody with an ACSL of 3 years 8 months. This compares to 22 per cent for the lowest category, with an ACSL of 1 year 7 months.

Information for offenders convicted of offences under guidelines introduced before the creation of the Sentencing Council is shown in the supplementary Excel tables.

4 Aggravating and mitigating factors

Once the judge has made an assessment of the harm and culpability involved in an offence (the offence category), they will then take into account other factors relating to the case or the offender that provide the context to how and why the offence was committed. These other factors can be **aggravating factors** which increase seriousness, suggesting that a more severe sentence is appropriate or **mitigating factors** which reduce seriousness or reflect personal mitigation and suggest that a less severe sentence is appropriate.

The extent to which the sentence is increased or decreased due to the presence of a particular aggravating or mitigating factor will depend on the relative importance of that factor on the overall case.

This section considers the prevalence of these factors and how their number and nature affect custodial sentences. Finally, a specific aggravating factor, number of previous convictions, is looked at in more detail.

4.1 Distribution of number of aggravating and mitigating factors taken into account

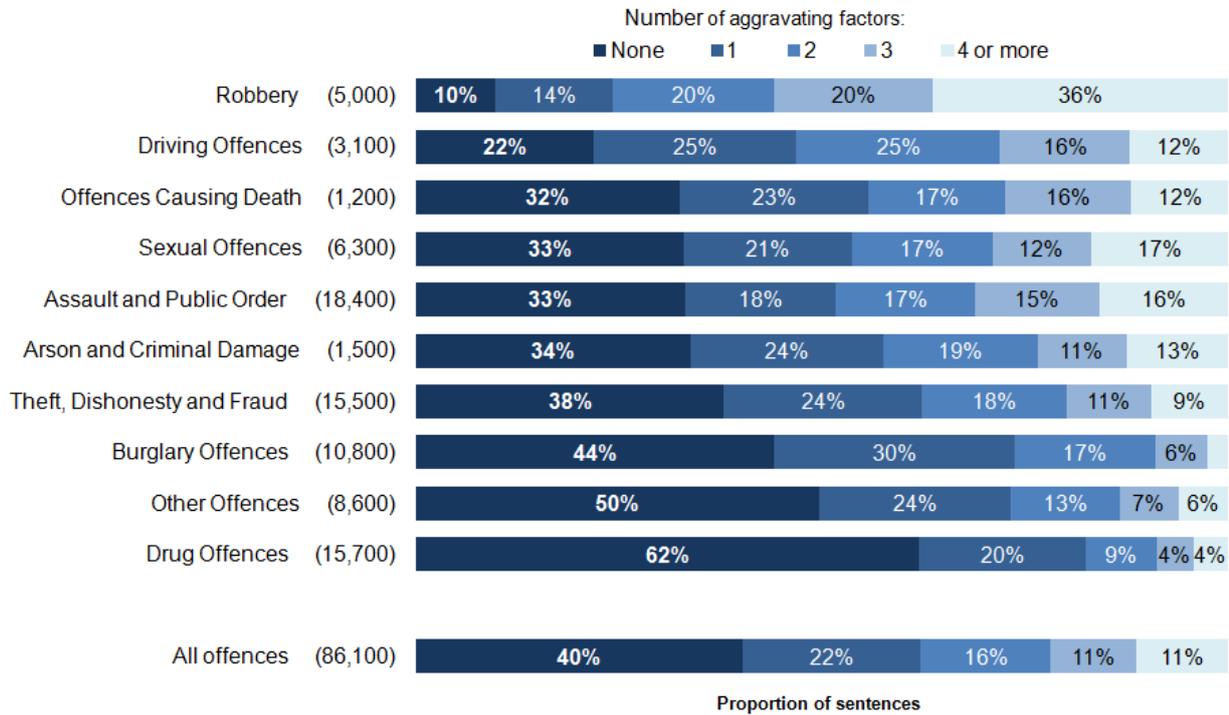
Summary Box 4.1: How likely is an offender to have aggravating or mitigating factors that influence their sentence, and if they do, how many do they usually have?

The presence of aggravation was most likely for robbery offences and least likely for drug offences. In general, aggravating factors were used on their own rather than in combination with other aggravating factors. The exceptions to this were driving offences, which were more likely to have either one or two factors and robbery offences, which were more likely to have four or more aggravating factors (**figure 4.1**).

Mitigating factors, on the other hand, were most likely for offences causing death and least likely for burglary offences. Across all offence types, when mitigating factors were present, it was most likely to be for just a single factor (**figure 4.2**).

Figure 4.1 shows the proportion of sentences on each offence form type by the number of aggravating factors that influenced the sentence. Although the presence of recent and relevant previous convictions is considered to be an aggravating factor, this factor has been excluded from this figure as it is covered separately in section 4.4.

Figure 4.1: Number of aggravating factors taken into account (excluding previous convictions) by offence type, Crown Court, 2013



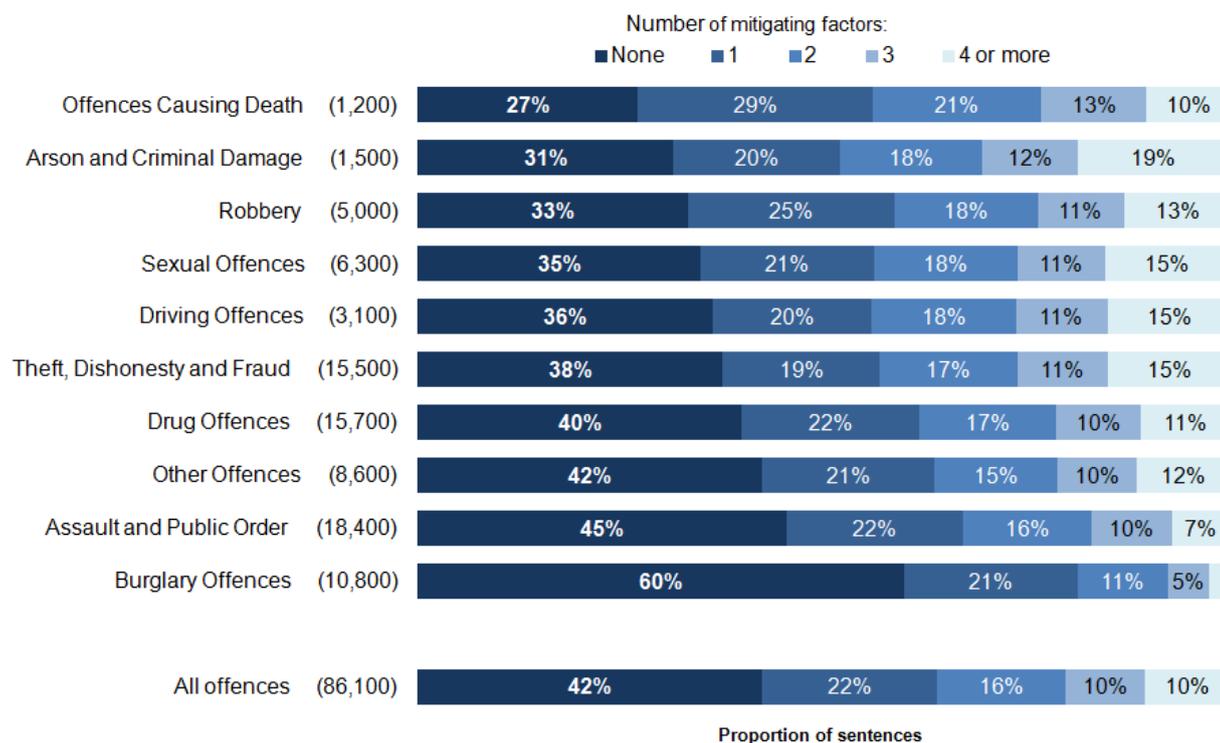
The presence of aggravation was most likely in cases of robbery offences, where only 10 per cent of those sentenced did not have any aggravating factors. On the other hand, it was least likely in cases of drug offences, with 62 per cent of cases without aggravating factors present.

Where aggravation was taken into account, it was most commonly for a single aggravating factor. In these cases, the proportion with a single aggravating factor ranged from 18 per cent for assault and public order offences to 30 per cent for burglary offences.

However, some offences were more likely to have a higher number of aggravating factors taken into account. Driving offences were equally likely to have either one or two factors (a quarter of cases for each); while robbery offences were more likely to have four or more factors (36 per cent).

Figure 4.2 shows similar information for mitigating factors. In new definitive guidelines introduced by the Sentencing Council, a lack of previous convictions can be taken as mitigation. This factor has been excluded from figure 4.2 as it is covered separately in section 4.4.

Figure 4.2: Number of mitigating factors taken into account (excluding lack of previous convictions) by offence type, Crown Court, 2013



The presence of mitigation was most likely in those sentenced for offences causing death with only 27 per cent of these cases without any mitigating factors. It was least likely in cases of burglary where 60 per cent of those sentenced had no mitigating factors.

As with aggravating factors, where mitigation was taken into account, it was most likely to be for a single mitigating factor. The proportion with a single factor ranged from 19 per cent for theft, dishonesty and fraud offences to 29 per cent for offences causing death.

4.2 Effect of number of aggravating and mitigating factors on severity for custodial sentences

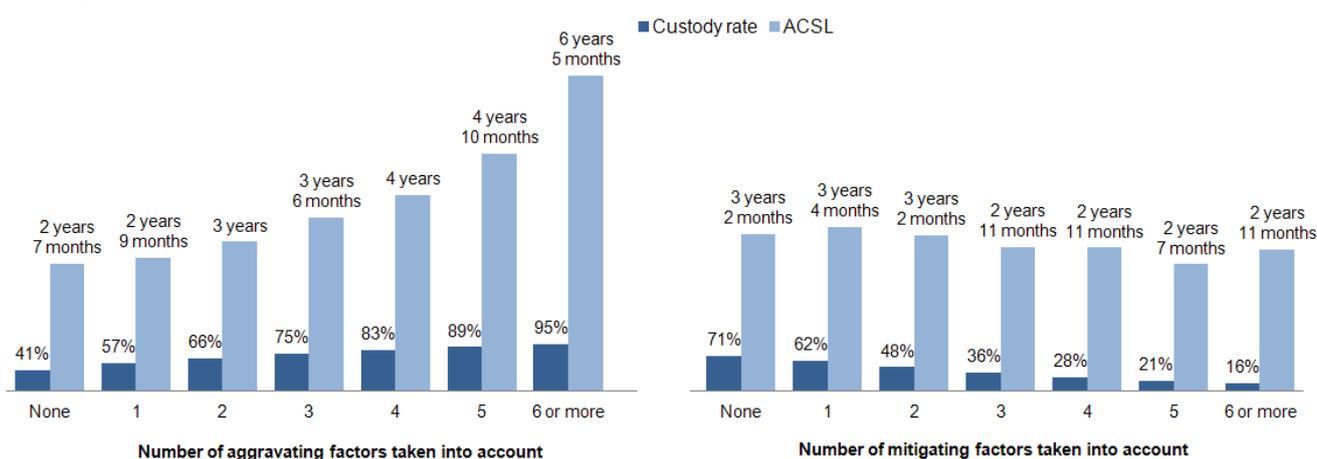
Summary Box 4.2: Does the number of aggravating or mitigating factors present in a case affect the sentence passed?

As expected, a case with **many aggravating factors** is dealt with more severely than a case with a few aggravating factors. These offenders are more likely to be sent to prison and **more likely** to be sent there for longer.

Conversely, offenders with **many mitigating factors** taken into account in their case are **less likely** to be sent to prison. However, if they are sent to prison, there is not much variability in the time they spend there, compared to cases with fewer factors (**figure 4.3**).

Figure 4.3 shows how the number of aggravating and mitigating factors present influences both the likelihood of being sent to immediate custody (the custody rate), and the average custodial sentence length (ACSL) across all offence types. As in section 4.1, the presence or absence of previous relevant convictions has not been included. The average custodial sentence lengths shown are *before* taking into account any reduction in sentence for a guilty plea.

Figure 4.3: Number of aggravating and mitigating factors taken into account (excluding presence or absence of previous relevant convictions), by custody rate and average custodial sentence length (ACSL), Crown Court, 2013



The figure shows the influence of aggravating factors quite distinctly – each additional factor increases the likelihood of immediate custody and the average length of custodial sentence. The chances of being sent to prison increased from 41 per cent when no aggravating factor was present to 57 per cent when there was a single factor. Subsequent factors increased custody rates by around 8 percentage points. In contrast, the presence of a single aggravating factor only increased the ACSL by two months compared to when there were no aggravating factors present. Thereafter, the effect of each additional factor increased the ACSL quite steadily until there were four factors, after which it increased much more sharply. Both the custody rate and the ACSL for six or more factors was more than twice that when there were no factors.

The figure also shows the influence of mitigation on the likelihood of being sent to prison; each additional mitigating factor reduced the likelihood of immediate custody. Like aggravating factors, where there was already a high number of mitigating factors, each additional factor had less of an impact on decreasing the likelihood of custody. However, the pattern for ACSL was not clear cut, and in general the number of mitigating factors did not have much bearing on the length of time offenders were sent to prison, until there were at least three of them. This demonstrates that aggravating factors have a stronger influence on the sentence length than mitigating factors.

4.3 Effect of aggravating and mitigating factors on custodial sentences

The nature of aggravating factors can vary substantially depending on the type of offence being sentenced. Mitigating factors also vary, but to a lesser extent. For these reasons, qualitative analysis of the particular factors present in cases can only meaningfully be done on an offence specific basis. An example of this is presented below, where the effect of individual aggravating and mitigating factors on custodial sentences for domestic burglary is presented. This offence was chosen because there is a high volume sentenced and the distribution of aggravating and mitigating factors contains a reasonable amount of cases to produce more robust inferences.

Sentencing guidelines include a non-exhaustive list of aggravating and mitigating factors and judges can consider other elements that they believe provide the context of the offence and factors relating to the offender. However, in this section, only those factors specifically mentioned in the guideline have been included. In addition, as in section 2, to avoid sample size issues, only those factors that were taken into account in at least 2 per cent of survey forms for domestic burglary have been included¹⁴.

Summary Box 4.3: What is the effect of specific aggravating and mitigating factors on sentences for domestic burglary?

In most cases, when aggravating factors were taken into account, offenders were **more** likely to be sent to prison, compared to domestic burglary offences in general. The presence of these factors also made offenders **more** likely to be sent to prison for longer. The exceptions were when the offender “failed to comply with current court orders” and the “offender was under the influence of alcohol/drugs”. The presence of either of these coincided with shorter sentence lengths by up to 4 months on average.

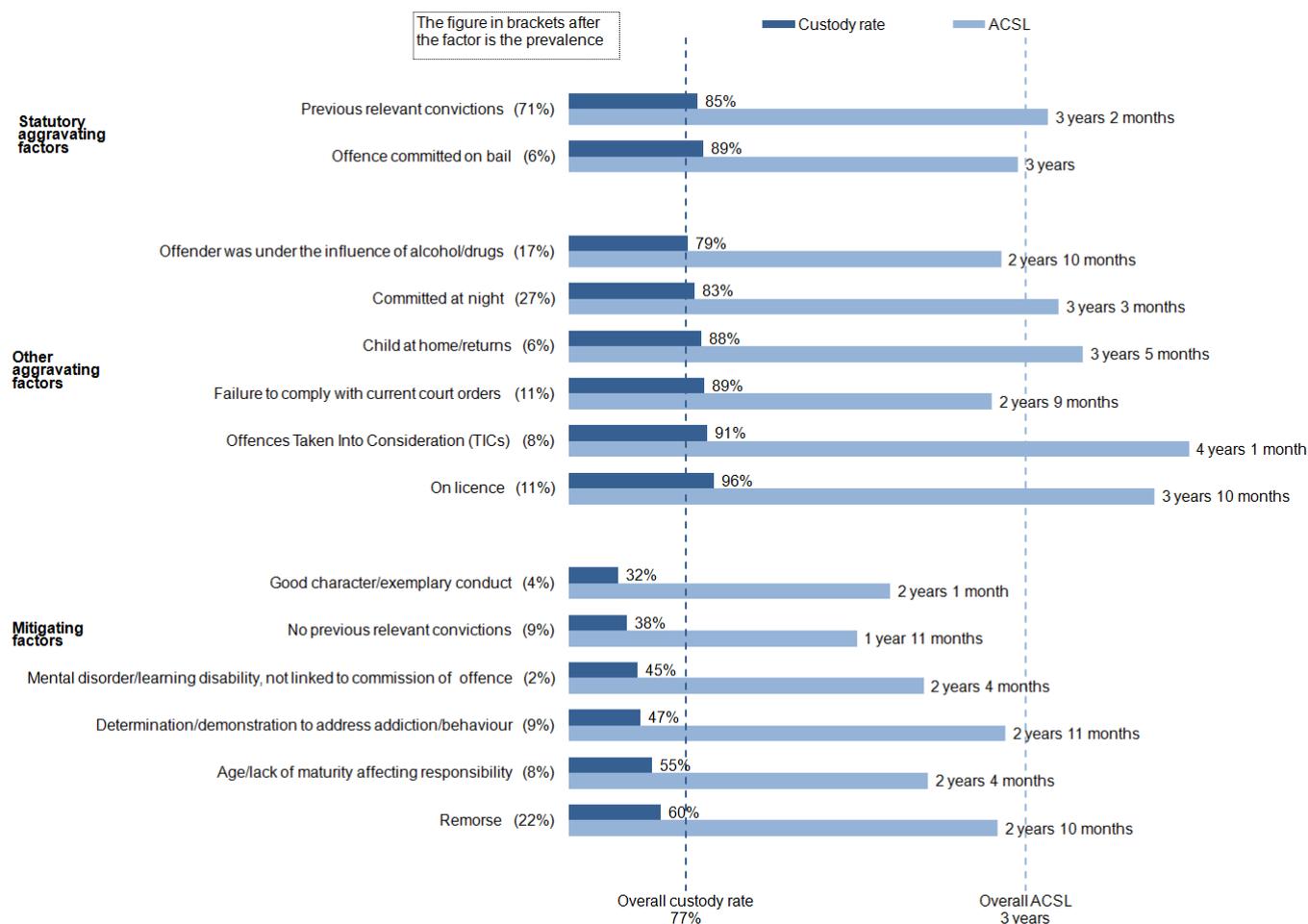
When mitigating factors were taken into account, offenders were less likely to be sent to prison and, if they were, less likely to be sent there for a long time (**figure 4.4**).

Figure 4.4 shows the relative importance of aggravating and mitigating factors on custodial sentences for domestic burglary.¹⁵ The figure provides the proportion of sentences with each factor. It also includes the custody rate and average custodial sentence length (ACSL) *before* any reduction for a guilty plea for cases in which each factor was taken into account, and for domestic burglary in overall. It is important to note that the chart shows average custody rates and sentence lengths for *all* cases in which each factor applied (for example, possibly in combination with other factors), **irrespective of whether that factor was present in isolation, or was one among many aggravating and mitigating factors.**

¹⁴ For a complete list of all the possible factors, refer to the relevant guidelines at <http://www.sentencingcouncil.org.uk/publications/?type=publications&s=&cat=definitive-guideline&topic=&year=> or the survey forms, at <http://www.sentencingcouncil.org.uk/publications/?type=publications&s=form&cat=crown-court-sentencing-survey>.

¹⁵ These factors are taken into consideration at step two of the decision making process. Factors taken into account at step one, which determine the category of the offence, were covered in section 2 for all burglary offences.

Figure 4.4: Domestic burglary: Aggravating and mitigating factors by prevalence, custody rate and average custodial sentence length (ACSL), Crown Court, 2013



The most common aggravating factor in domestic burglary was “previous relevant convictions” which was present in 71 per cent of cases. The second most common aggravating factor was “offence committed at night”, present in only 27 per cent of cases.

The figure shows that where at least one aggravating factor was taken into account, custody rates were higher than the overall average for these offences. Custody rates varied from 79 per cent for cases in which the “offender was under the influence of alcohol or drugs” to 96 per cent where the “offence [was] committed whilst on licence”. They were all higher than the overall custody rate of 77 per cent for these offences.

When aggravating factors were present, average custodial sentence lengths were also typically longer than the average sentence length for domestic burglary. For example, cases with “Offences Taken Into Consideration”¹⁶ had the longest ACSL of 4 years 1 month. This was over a year longer than the overall ACSL for these offences. However, this general pattern for ACSL did not apply to all factors. Most noticeable is the ACSL for cases where there was a “failure to comply with current court orders” which was

¹⁶ Offences Taken Into Consideration occur where an offender admits the commission of other offences in the course of sentencing proceedings and requests those other offences to be taken into consideration. For more information refer to the Sentencing Council’s *Offences Taken Into Consideration and Totality Definitive Guideline* available at <http://www.sentencingcouncil.org.uk/publications/?type=publications&s=&cat=definitive-guideline&topic=&year=>.

3 months shorter than the average. However, cases with this factor present resulted in relatively high custody rates that were 12 percentage points above the overall custody rate.

Figure 4.4 also shows that the most common mitigating factor was “remorse”¹⁷, taken into account in 22 per cent of cases. The next most common factors were “no previous relevant convictions”¹⁸ and “determination/demonstration to address addiction/behaviour”, each present in only 9 per cent of cases.

The presence of mitigating factors reduced the likeliness of being sent to prison, and where custody was imposed, reduced the sentence length. Custody rates were all lower than the overall average for these offences. They ranged from 32 per cent for cases in which there was “good character and/or exemplary conduct” (present in only 4 per cent of cases) to 60 per cent for those where there was “remorse”. Average custodial sentence lengths were all shorter than the overall for domestic burglary offences. The shortest ACSL was for cases in which there were “no previous relevant convictions”, which resulted in sentences that were substantially shorter, by 1 year 1 month, than the overall average for these offences. Although “remorse” was the most common mitigating factor taken into account, it resulted in sentences that were, typically only 2 months shorter than the average.

4.4 Previous convictions taken into account

This section deals with a specific aggravating factor, the number of previous convictions.

Not all previous convictions will be taken into account when determining the sentence. The court must have regard to the relevance of the previous conviction to the current offence and the time that has elapsed since the previous conviction.¹⁹ Where an offender has previous convictions which are very different in nature to the current offence, or where they occurred a long time ago, they are unlikely to have a significant effect on the sentence. The previous convictions that the judge decides to treat as an aggravating factor are referred to here as previous convictions **taken into account**. This may be different to the actual number of previous convictions the offender has.²⁰

¹⁷ Remorse will only be taken as mitigation where the judge deems it to be genuine. Simple statements of remorse will rarely be sufficient to satisfy a sentencer of their true nature unless accompanied by other evidence of remorse, including the time at which the remorse was expressed.

¹⁸ The proportion of offenders with the mitigation factor “no previous relevant convictions” is not the same as the proportion where the aggravating factor of previous convictions was not indicated.

¹⁹s.143(2) Criminal Justice Act 2003

²⁰ This is important to bear in mind when looking at other sources of information on previous convictions, as these will generally include all previous convictions regardless of whether they were taken into account at sentencing.

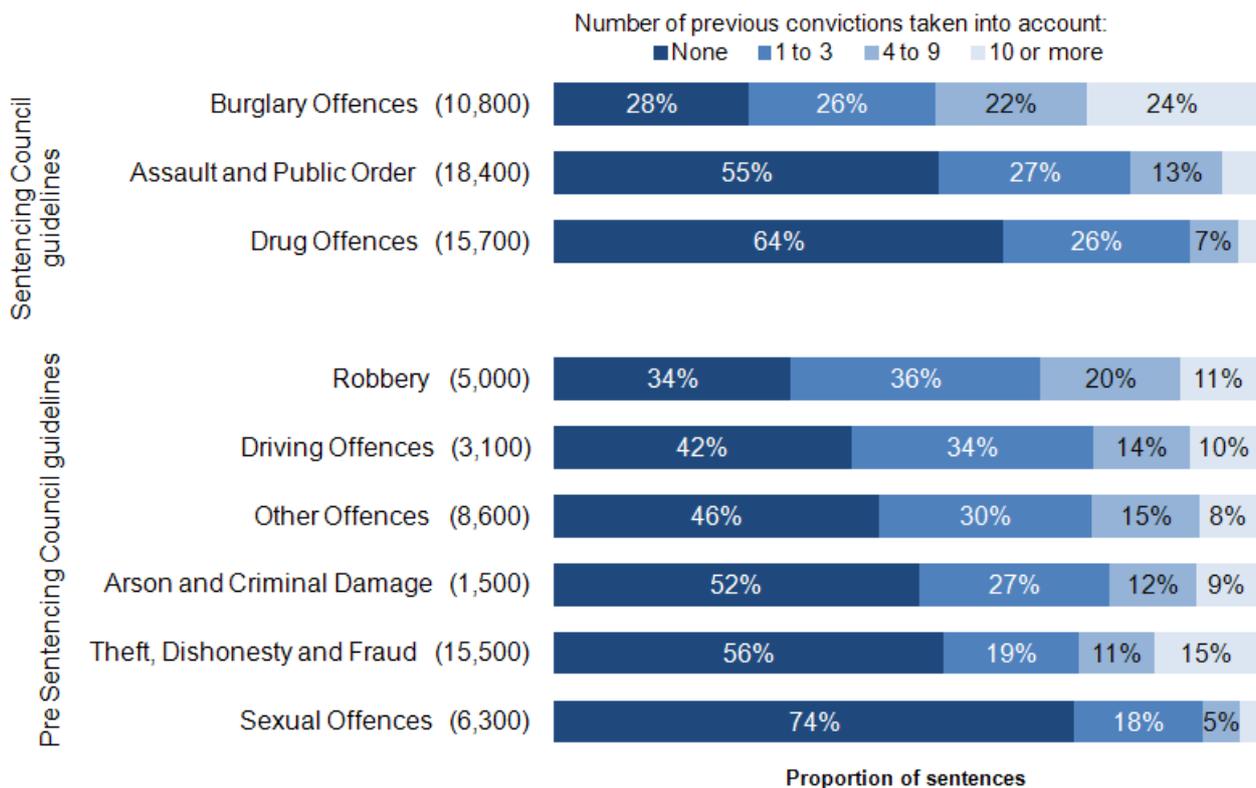
Summary Box 4.4: How likely is an offender to have previous convictions that influence their sentence and how does their presence affect their sentence?

The likelihood that an offender has previous convictions that are recent and relevant enough to be taken into account depends on the type of offence they are being sentenced for. Offenders for burglary, robbery and driving offences, are more likely to have recent and relevant previous convictions that influence their sentence, whereas offenders being sentenced for sexual offences are much less likely to have previous convictions that are recent and relevant enough to be taken into account (figures 4.5 and 4.6).

Where an offender does have recent and relevant previous convictions, that offender is more likely to be sentenced to immediate custody, with this likelihood increasing as the number of previous convictions increases (figure 4.7).

Figure 4.5 shows the number of previous convictions taken into account at sentencing, by the offence form type, excluding offences causing death which are shown in figure 4.6.

Figure 4.5: Number of previous convictions taken into account, by offence form type, Crown Court, 2013



The figure shows that offenders who committed burglary offences were the most likely to have previous convictions that were recent and relevant enough to be taken into account (72 per cent). On the other hand, offenders who committed sexual offences were the least likely (26 per cent).

The information is also shown in figure 4.6 for offences causing death, which are recorded on a different basis.

Figure 4.6: Number of previous convictions taken into account for offences causing death, Crown Court, 2013

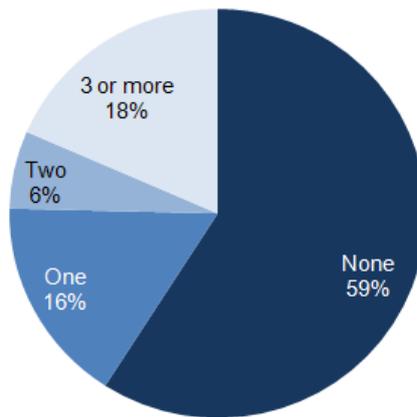
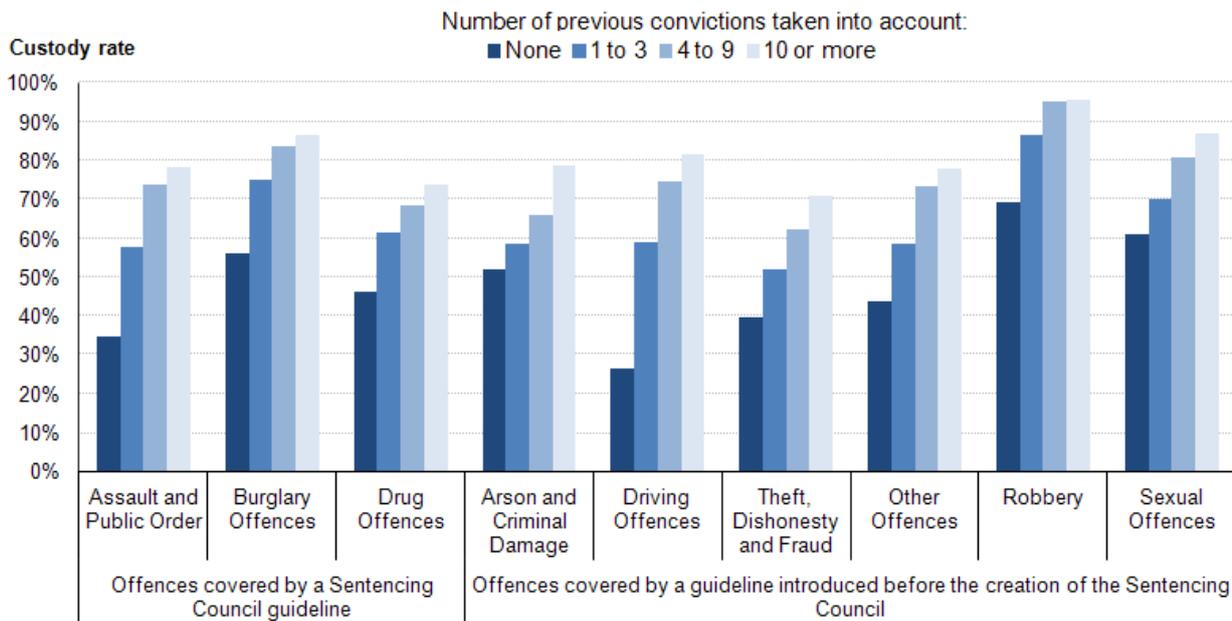


Figure 4.7 shows the relationship between the proportion of offenders who were sentenced to immediate custody (the custody rate) and the number or previous convictions taken into account. The number of previous convictions for offences causing death has been excluded from this figure as a different basis is used for recording them. However, it is available in the supplementary Excel tables.

Figure 4.7: Number of previous convictions taken into account, by custody rate, Crown Court, 2013



The figure shows that for all offence types, the presence of at least one recent and relevant previous conviction increased the chance of being sent to custody. The increase was most prominent for driving offences; the proportion sent to immediate custody increased from 26 per cent for cases with no previous convictions taken into account to 82 per cent for offenders with 10 or more.

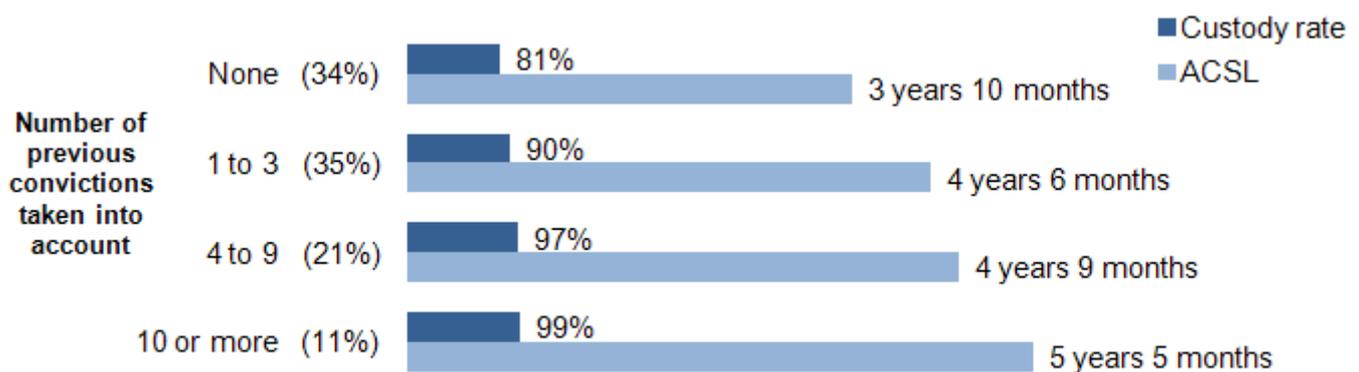
In general, where an offender already had at least one recent and relevant previous conviction, any further ones taken into account by the judge had less of an impact on the likelihood of being sent to immediate custody. The exception to this was arson and criminal damage where the presence of 10 or more factors had a greater increase in impact.

It should be noted that offenders convicted of relatively minor crimes are more likely to have committed a string of similar offences, whilst those convicted of more serious crimes are much less likely to have done

so. The more serious offences, attracting longer sentences are more likely to be captured under the data relating to an offender with fewer previous convictions taken into account. This can make it appear as though offenders with a higher number of previous convictions taken into account are given lower custodial sentence lengths.

In order to tease out the actual effect of previous convictions on custodial sentence lengths, the level of seriousness for specific offences needs to also be taken into account. As an example, the relationship between the average custodial sentence length (ACSL) and previous convictions taken into account for level 2 robbery offences²¹ is shown in figure 4.8. Level 2 offences were chosen as these represent the bulk of robbery offences (57 per cent).

Figure 4.8: Level 2 Robbery offences: Number of previous convictions taken into account, by proportion of offences, custody rate and average custodial sentence length (ACSL), Crown Court, 2013



The figure shows that as the number of previous convictions taken into account increases, the custody rate and the ACSL increase. For this offence, the custody rate even with no previous convictions is very high and therefore any further increase in the number of previous convictions only increases the custody rate slightly. The ACSL also increases with the number of previous convictions, as does the differential between the groups. When the number of previous convictions taken into account increased from “1 to 3” to “4 to 9”, the ACSL increased by 3 months. However, when it increased from “4 to 9” to “10 or more”, the ACSL increased by 8 months.

²¹ The Sentencing Guideline Council definitive guideline for robbery describes level 2 offences as those where “a weapon is produced and used to threaten, and/or force is used which results in injury to the victim”. They are between the most serious robbery offences (use of weapon and/or significant force and serious injury caused) and the least serious offences (threat and/or use of minimal force).

5 Pleading guilty to the offence

Where an offender pleads guilty to an offence, the court is under a duty to take into account the stage in the proceedings at which the plea is indicated and the circumstances in which the indication is given.²² This will normally result in a reduced sentence and the reduction is applied after all aggravating and mitigating factors have been taken into account.

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.

The Sentencing Guidelines Council (SGC)²³ definitive guideline, *Reduction in Sentence for a Guilty Plea*, recommends a reduction of one third when the offender pleads guilty at the first reasonable opportunity.²⁴ The level of reduction diminishes when the plea is entered later than the first reasonable opportunity. Guidance on where the first reasonable opportunity occurs is also provided in the guideline.

The stages at which the defendant has an opportunity to plead guilty will vary depending on the case. All cases begin in the magistrates' court and some types of cases will offer the defendant the opportunity to plead guilty at this stage. In cases where the law does not allow a plea to be entered at the magistrates' court, the first opportunity to plead guilty can either be at an early guilty plea hearing or the Plea and Case Management Hearing (PCMH) in the Crown Court. After the PCMH, there may be several other opportunities to plead guilty, including on the day of trial.

Summary Box 5.1: What is the relationship between sentencing practice and reduction in sentence for a guilty plea?

The majority of offenders who plead guilty do so early on in the court process, either before, or at, the PCMH.

The way in which guilty plea reductions are granted for these offenders is, on the whole, consistent with the approach recommended by the guideline, *Reduction in Sentence for a Guilty Plea*. For those offenders who plead at one of these early stages, a higher reduction is usually granted, whilst for the smaller volume entering a plea later in the process, the level of reduction granted is less (**figure 5.1**).

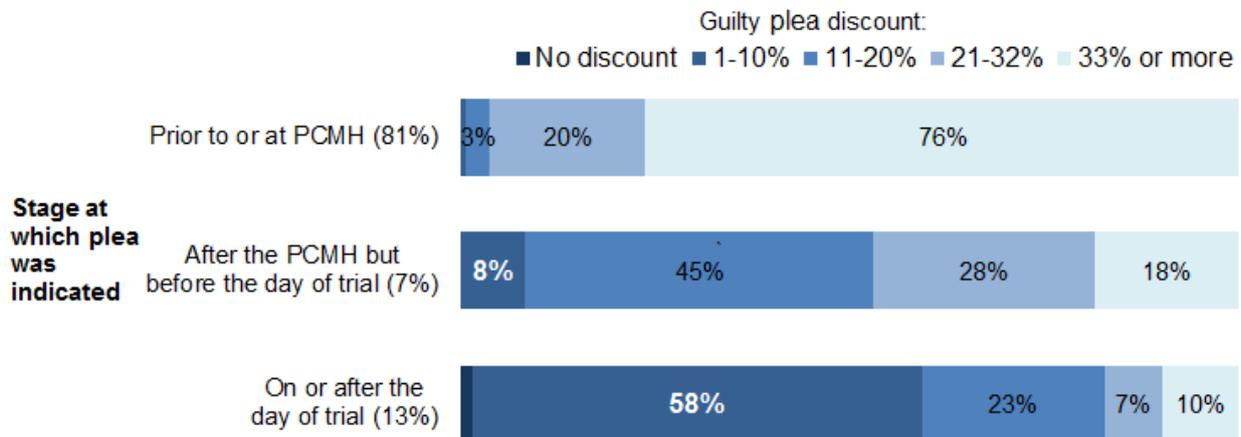
In 2013, 90 per cent of offenders sentenced at the Crown Court pleaded guilty to the offence. Figure 5.1 shows the reduction given to offenders who entered a guilty plea by the stage the plea was entered.

²² s.144 Criminal Justice Act 2003.

²³ Predecessor body of the Sentencing Council.

²⁴ A copy of the SGC Guideline, *Reduction in Sentence for a Guilty Plea*, can be accessed on the Council's website at: <http://www.sentencingcouncil.org.uk/publications/?type=publications&s=&cat=definitive-guideline&topic=&year=>.

Figure 5.1: Offenders pleading guilty by the stage at which the plea was entered and the reduction applied to their sentence, Crown Court, 2013



The majority of offenders who entered a guilty plea did so either prior to, or at, the PCMH, with 81 per cent of guilty pleas being entered at this stage. For those offenders who entered a plea at this stage, the highest level of reduction was granted in over 3 out of 4 cases (76 per cent). Where the offender entered a plea at the latest stage, on or after the day of trial, a reduction of between 1 and 20 per cent was granted in 4 out of 5 cases (81 per cent).

When considering the results in figure 5.1, it is important to bear in mind that the guideline provides for exceptions to the recommended approach. For example, in cases where the offender was caught “red handed”, a lesser reduction may be given even if a plea was entered at the earliest opportunity. On the other hand, in cases where the defendant is willing to plead guilty, but only to a lesser offence than that presented by the prosecution, it is only after the lesser offence is accepted by all parties that the guilty plea can be entered. This may be late in the process, but will still constitute the defendant’s first opportunity to plead guilty to the lesser offence and therefore may still receive the highest level of discount. Such cases cannot be distinguished in figure 5.1.

As is the case with all sentencing guidelines, where it is in the interests of justice to do so, it may be entirely appropriate for the court to depart from the approach recommended by the guideline *Reduction in Sentence for a Guilty Plea*.

6 Departures from Sentencing Council Guidelines

Before 2011, all sentencing guidelines in use were issued by the Sentencing Council's predecessor body, the Sentencing Guidelines Council (SGC). In 2011, the Sentencing Council issued its first definitive guideline for assault offences which became applicable to sentences passed after 13 June 2011. Since then it has produced a number of definitive guidelines. This section discusses three of these: *Assault Definitive Guideline*, *Burglary Offences Definitive Guideline* and *the Drug Offences Definitive Guideline*.

Under any Sentencing Council guideline, the first decision that the judge should make when sentencing is the category of the offence being sentenced. For each category, the guideline recommends a range of sentences to apply. These are known as the **category ranges**. The **offence range** is the full spectrum of sentences over all offence categories prior to any reduction for a guilty plea. It begins at the bottom of the range for the lowest offence category and ends at the top of the range for the highest offence category. For example, for the offence of Actual Bodily Harm (ABH), the offence range goes from a fine to 3 years' immediate custody. The custodial sentence length recorded on the Crown Court Sentencing Survey is after any guilty plea reduction. This has been adjusted back to a pre guilty plea sentence using the information on the level of reduction given which is also recorded on the Crown Court Sentencing Survey form.

Courts are not required to stay within the relevant category range; however they are under a legislative duty²⁵ to impose a sentence which is within the offence range, **unless it would be contrary to the interest of justice to do so**. Where cases fall outside an offence sentencing range, there are mechanisms within the Criminal Justice System for the interested parties to challenge the sentencing decision. For instance, for certain types of offences the case can be referred by the Attorney General to the Court of Appeal as being, unduly lenient. Where the sentence is seen to be excessive the defendant can exercise their right to appeal.

This section will show how often, in 2013, sentences for assault, burglary and drug offences departed, from the offence ranges, either above the range or below it. Where the proportion of cases falling outside the offence range, was greater than 5 per cent, either above or below, information on the factors taken into consideration by the judge have been provided and further work is being undertaken to further understand these cases. Sentences where the offender was a youth (under 18 years of age), or the sentence imposed was an IPP or life sentence, or where a hospital order was handed down have been excluded from the results shown. Furthermore, due to the volatility of small volumes of data, results have not been shown for offences where fewer than 200 Crown Court Sentencing Survey forms were completed.

²⁵ s.125(3) Coroners and Justice Act 2009

6.1 Assault offences

Summary Box 6.1: Did judges generally sentence within the guidelines for assault offences?

Over all assault offences covered by the guideline, 97 per cent of sentences fell within the relevant offence range, 1 per cent fell below and 2 per cent fell above.

Sentences for “grievous bodily harm with intent” had the highest proportion of departures, which were mainly below the range while those for “common assault” had the smallest proportion of departures for these offences (**table 6.1**).

For each offence covered by the Assault Definitive Guideline where more than 200 Crown Court Sentencing Survey forms were completed, table 6.1 shows the proportion that fell below, within, or above the offence ranges specified. Racially and religiously aggravated assaults are also covered by the guideline and have therefore been included in the results shown.

Table 6.1: Assault definitive guideline: Proportion of sentences within and outside the offence range by offence, Crown Court, 2013

Offence	National level totals	Below range	Within range	Above range	Bottom of offence range	Top of offence Range
Assault occasioning actual bodily harm	5,900	1%	97%	2%	Fine	3 years
Causing grievous bodily harm with intent to do grievous bodily harm/Wounding with intent to do grievous bodily harm	1,400	7%	92%	1%	3 years	16 years
Common Assault ^(a)	2,000	0%	99%	1%	Discharge	26 weeks
Inflicting grievous bodily harm/Unlawful wounding	3,500	<0.5%	97%	3%	Community Order	4 years
Total (across all Assault Definitive Guideline offences)	18,400	1%	97%	2%	-	-

Sentences for youths and those resulting in an IPP or Life sentence have been excluded.

(a) 8 per cent of the common assault cases above the guideline range were racially aggravated which has a maximum sentence of 2 years. Further details are provided towards the end of this section.

Over all sentences covered by the guideline, 97 per cent fell within the offence range in 2013.

The offence of “causing grievous bodily harm with intent” (GBH with intent) had the highest proportion of sentences falling outside (both above and below) the offence range during 2013. For this offence, 92 per cent of sentences fell within the offence range, and 8 per cent fell outside.

There is a clear difference between the frequency which factors indicating greater harm and higher culpability have been used for sentences outside the offence range compared to those within. This is shown in table 6.2.

Table 6.2: Offence of “causing grievous bodily harm with intent”: Proportion of cases by greater harm and higher culpability factors that were below, within and above the offence range

Harm/Culpability Factor	Below range	Within range	Above range
Factors indicating greater harm			
Injury/fear of injury which is serious in the context of the offence	11%	35%	73%
Victim particularly vulnerable	2%	13%	55%
Sustained or repeated assault on the same person	20%	39%	73%
Factors indicating higher culpability			
Significant degree of premeditation	5%	24%	64%
Threatened/actual use of weapon/equivalent	40%	80%	82%
Intended to cause more serious harm	6%	17%	27%
Deliberately causes more harm than necessary	2%	14%	45%
Targeting of vulnerable victim(s)	2%	13%	55%
Leading role in group or gang	0%	11%	36%

As can be seen in the table, the factors indicating greater harm or higher culpability have been used much less frequently in cases that fell below the offence range. On average the sentences that fell below the offence range also had fewer aggravating and more mitigating factors than those that were either within or above the offence range. All cases will be associated with some level of aggravation and mitigation. The factors in this table have been looked at in isolation and not in combination with other aggravating and mitigating factors.

As part of the Sentencing Council’s work programme it will shortly be reviewing the Assault Definitive Guideline which will be informed by a fuller investigation of the GBH with intent sentence outcomes.

Sentences for common assault had the smallest proportion of departures from the offence range in the guideline, with 99 per cent of sentences falling in the range defined.

It is important to note that some assault offences are summary only offences, and would therefore ordinarily be tried at the magistrates’ court. Possible reasons why these offences have been sentenced at the Crown Court are:

- The offence might have been racially/religiously aggravated which attracts a higher statutory maximum. Racial or religious aggravation may also be the reason for some sentences falling above the range specified.
- Such offences may enter the Crown Court as, or alongside, a more serious offence, but during the course of proceedings, circumstances may arise which result in a conviction for the lesser offence only. In these circumstances the primary charge then becomes a summary only offence. However, as the case has already entered the Crown Court it will be completed there, including the final sentence and is therefore captured by the survey.

6.2 Burglary offences

Summary Box 6.2: Did judges generally sentence within the guidelines for burglary offences?

Over all burglary offences covered by the guideline, 97 per cent of sentences fell within the relevant offence range, almost none fell below and 3 per cent fell above.

For sentences of “domestic burglary” and “non domestic burglary” virtually all departures were above the offence range (**table 6.3**).

For each offence covered by the Burglary Offences, Definitive Guideline where more than 200 Crown Court Sentencing Survey forms were completed, table 6.3 shows the proportion that fell below, within, or above the offence ranges specified.

Table 6.3: Burglary definitive guideline: Proportion of sentences within and outside the offence range by offence, Crown Court, 2013

Offence	National level totals	Below range	Within range	Above range	Bottom of offence range	Top of offence Range
Domestic burglary	8,300	<0.5%	97%	3%	Community Order	6 years
Non domestic burglary	2,100	<0.5%	97%	3%	Fine	5 years
Total (across all Burglary Definitive Guideline offences)	10,800	<0.5%	97%	3%	-	-

Sentences for youths and those resulting in an IPP or Life sentence have been excluded.

Over all sentences covered by the new guideline, 97 per cent fell within the offence range in 2013.

Sentences for “non domestic burglary” and “domestic burglary” both had 97 per cent of sentences falling within the range.

6.3 Drug offences

Summary Box 6.3: Did judges generally sentence within the guidelines for drug offences?

Across all drug offences covered by the guideline, 98 per cent of sentences fell within the relevant offence range, 1 per cent fell below and 1 per cent fell above.

Sentences for “possession of a controlled drug – class A” had the highest proportion of departures, with nearly 1 in 7 being sentenced outside the offence range. On the other hand, offences of “production of a controlled drug class B/cultivation of a cannabis plant” and “supply or offering to supply a class B controlled drug/possession of a class B controlled drug with intent to supply it to another” were virtually all sentenced within the guideline range (**table 6.4**).

For each offence covered by the Drug Offences Definitive Guideline where more than 200 Crown Court Sentencing Survey forms were completed, table 6.4 shows the proportion that fell below, within, or above the offence ranges specified.

Table 6.4: Drugs definitive guideline: Proportion of sentences within and outside the offence range by offence, Crown Court, 2013

Offence	National level totals	Below range	Within range	Above range	Bottom of offence range	Top of offence Range
Possession of a controlled drug Class A	600	7%	85%	7%	Fine	51 weeks
Possession of a controlled drug Class B	1,000	0%	98%	2%	Discharge	26 weeks
Production of a controlled drug Class B/Cultivation of a cannabis plant	2,100	0%	100%	<0.5%	Discharge	10 years
Supply or offering to supply a controlled drug/Possession of a controlled drug with intent to supply it to another Class A	5,600	<0.5%	99%	1%	Community Order	16 years
Supply or offering to supply a controlled drug/Possession of a controlled drug with intent to supply it to another Class B	3,500	<0.5%	100%	<0.5%	Fine	10 years
Total (across all Drug Definitive Guideline offences)	15,700	1%	98%	1%	-	-

Sentences for youths and those resulting in an IPP or Life sentence have been excluded.

Over all sentences covered by the drug offences guideline, 98 per cent fell within the offence range in 2013.

The offence of “possession of a controlled drug class A” had more than 5 per cent of Crown Court sentences that fell outside the guideline offence range. For this offence 85 per cent fell within the offence range, 7 per cent were below and 7 per cent were above the offence range. It should be noted that the majority of “possession of controlled drug class A” offence cases would be seen in the Magistrates’ court, therefore these results should not be seen as indicative of cases across both the Crown Court and Magistrates’ courts.

Table 6.5 below shows the aggravating and mitigating factors that were used most often in this offence.

Table 6.5: Offence of “possession of a controlled drug class A”: Proportion of cases by leading aggravating and mitigating factors that were below, within and above the guideline range

Type of factor	Below range	Within range	Above range
Aggravating factor			
Attempt to conceal/dispose of evidence	0%	5%	10%
Failure to comply with court orders	5%	9%	24%
Mitigating factor			
Determination to/demonstration to address addiction/behaviour	19%	17%	19%
Isolated incident	14%	10%	14%
Good character/exemplary conduct	14%	8%	5%
Remorse	10%	15%	14%