

Crown Court Sentencing Survey
Annual Publication

January to December 2014
England and Wales

Acknowledgements

The Council is very grateful to the Crown Court judges at all Crown Court centres in England and Wales for participating in the survey. Without their dedication, this 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 were made to the survey and its administration.

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Executive summary

The Sentencing Council for England and Wales ran the Crown Court Sentencing Survey between 1 October 2010 and 31 March 2015. The survey collected information directly from judges on the factors taken into account when they imposed a sentence at the Crown Court. The data was collected using a number of different forms depending on the offence type. This was to reflect that some factors taken into account were specific to the type of offence committed. Therefore, some results are presented on a form specific basis.

This publication presents the findings of the survey for sentences passed in the Crown Court during 2014. For the first time, the publication includes results demonstrating proportionality in sentencing at individual offence level, where judges punish offenders that commit crimes that are more serious with appropriate custodial sentences, and punish those that commit an offence of lesser gravity in a proportionate way to more serious offences. It also shows the impact of a range of factors on the final sentence imposed, including new analysis on whether or not offenders that pleaded guilty did so at the first reasonable opportunity and the subsequent reduction in sentence that was applied. 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 2014 under Sentencing Council definitive guidelines.

Following a review last year, the Sentencing Council decided to stop the survey to allow for a more bespoke and targeted data collection in both the Crown Court and magistrates' courts for specific guidelines. Therefore, this is the final publication of data from the survey.

The survey results have helped to show how judges use sentencing guidelines; how sentencing outcomes reflect the process and the recommended factors to take into account. In the future, the Council will undertake evaluation to help identify relevant factors for future guidelines and to explore some of the findings presented in this report.

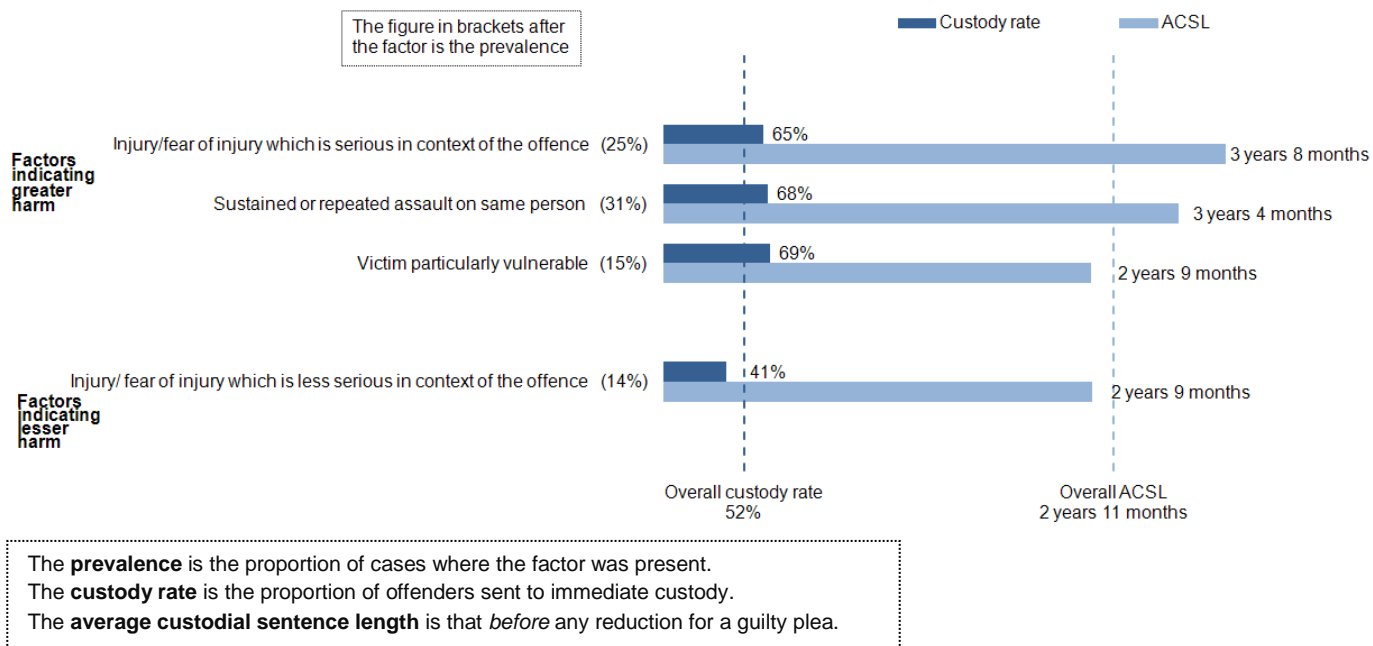
Factors indicating the level of harm and level of culpability

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. Judges determine this 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 used to determine the level of harm and the level of culpability.¹ These factors are important components in sentencing decisions. When factors indicating greater culpability or greater harm were present, not only was the offender more likely to be sent to prison, but their sentence was more likely to be longer. Conversely, when factors indicating lesser harm or those indicating lower culpability were present, judges were less likely to send offenders to prison, and if they were, it was generally for a shorter time. For example, figure 1 shows the effect of factors indicating the level of harm for assault offences. Section 2 of the report presents similar results for factors indicating the level of culpability for assault offences. The results for burglary offences are available in the Excel supplementary tables.

¹ Analysis is not shown for drug offences because the survey form used for these offences does not include specific factors used to assess harm and culpability. This is because the drug offences definitive guideline uses a different model to assess harm and culpability.

Figure 1: Factors indicating the level of harm, by prevalence, custody rate and average custodial sentence length (ACSL) for assault offences, Crown Court, 2014



Offence category or level

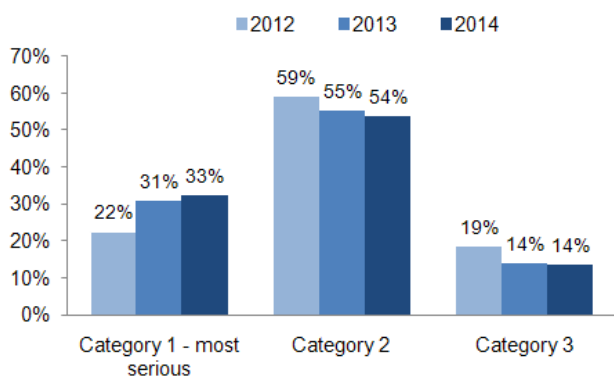
Following an assessment of the level of harm and the level of culpability, the judge will decide on the offence category. Category 1 offences are the most serious and involve a high level of harm and culpability. Category 2 offences are less serious than category 1 offences and so on.

Cases assigned to the most serious guideline category have higher custody rates, and attract longer custodial sentences. Cases assigned to the least serious guideline category have lower custody rates and shorter custodial sentences.

For assault and burglary offences, there has been an increase in the proportion of cases assigned to the most serious guideline category, and also a decline in the proportion of cases assigned to less serious categories. This is shown in figure 2; however, it is too early to determine if this is an emerging trend.

Figure 2: Distribution of category of offence for assault and burglary offences, Crown Court, 2012 to 2014

(a) Assault offences



(b) Burglary offences

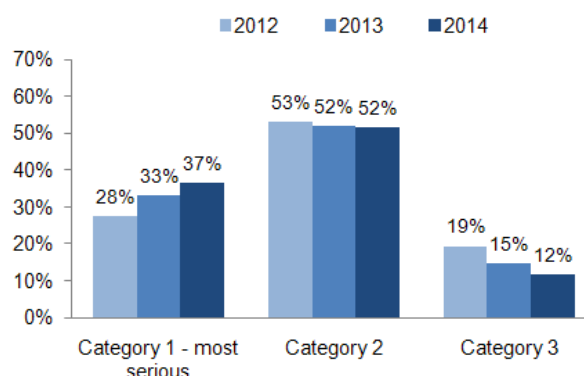
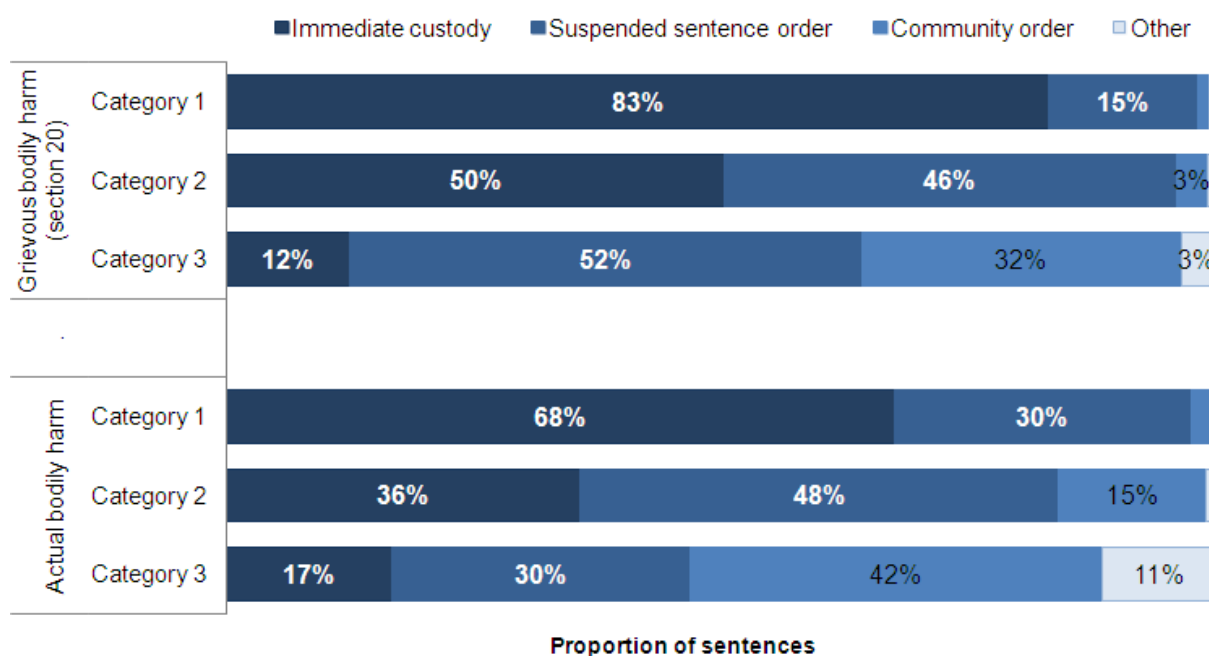


Figure 3 shows the effect of the category of offence on the sentence outcome for two different offences covered by the assault definitive guideline; the offence of inflicting grievous bodily harm (GBH section 20) and that of assault occasioning actual bodily harm.

Figure 3: Category of offence by sentence outcome for selected assault offences, Crown Court, 2014



The figure shows that an offender sentenced for a category 1 offence was more likely to be sentenced to immediate custody than one sentenced for a category 2, or lower offence. Moreover, sentences for GBH section 20 (the more serious of the two offences) were more severe than for ABH. This pattern, where sentence outcomes for more serious offences are harsher than those for less serious offences, even where the category of offence is the same, demonstrates that courts are following the principle of proportionality in sentencing these offences.

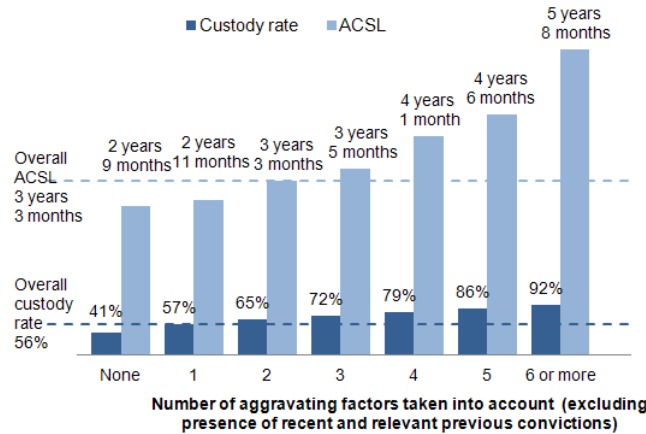
Aggravating and mitigating factors

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.

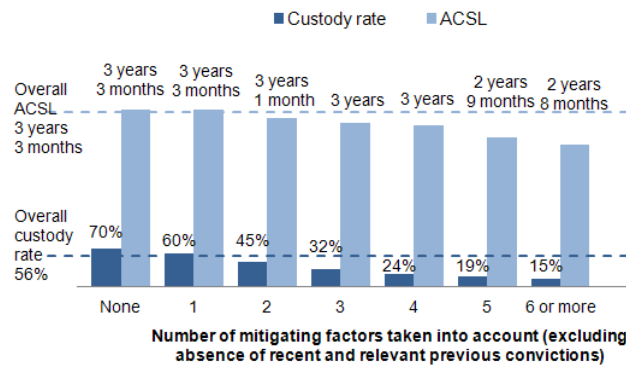
Each additional aggravating factor was associated with an increase in sentence severity, in terms of custody rate and average custodial sentence length. Although each additional mitigating factor was associated with a reduced chance of being sent to custody, when the two kinds of factors are compared, the presence of additional aggravating factors appeared to have a much stronger influence on sentence length than additional mitigating factors. This is shown in figure 4.

Figure 4: Number of factors taken into account, by custody rate and average custodial sentence length (ACSL), Crown Court, 2014

(a) Aggravating factors

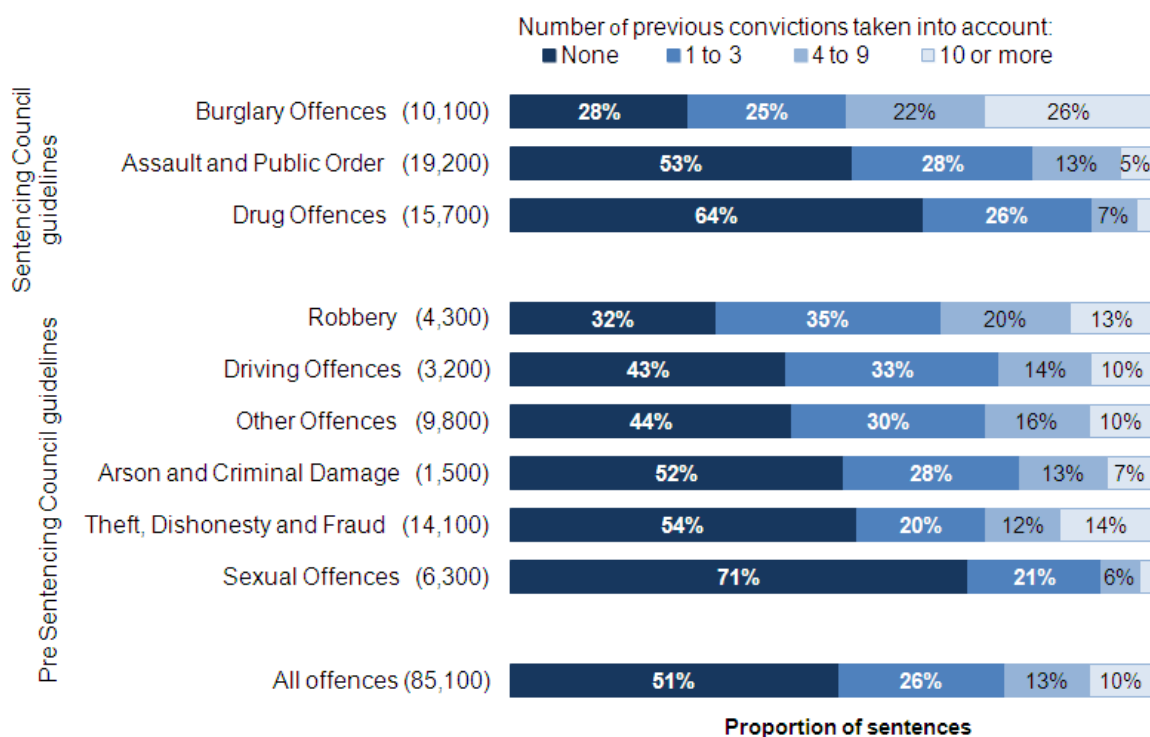


(b) Mitigating factors



The report also considers a specific aggravating factor, the number of recent and relevant previous convictions in more detail. Courts must treat recent and relevant previous convictions as an aggravating factor. Overall, approximately half the offenders sentenced in the Crown Court in 2014 had recent and relevant previous convictions taken into account. Burglars were most likely to have recent and relevant previous convictions that influenced their sentence while sex offenders were least likely to have any. Figure 5 shows this result.

Figure 5: Number of previous convictions taken into account, by offence form type, Crown Court, 2014



Notes

- (a) This figure excludes information for offences causing death as this is recorded on a different basis.
 (b) The offence form type for theft, dishonesty and fraud and for sexual offences includes both the new and the old forms.

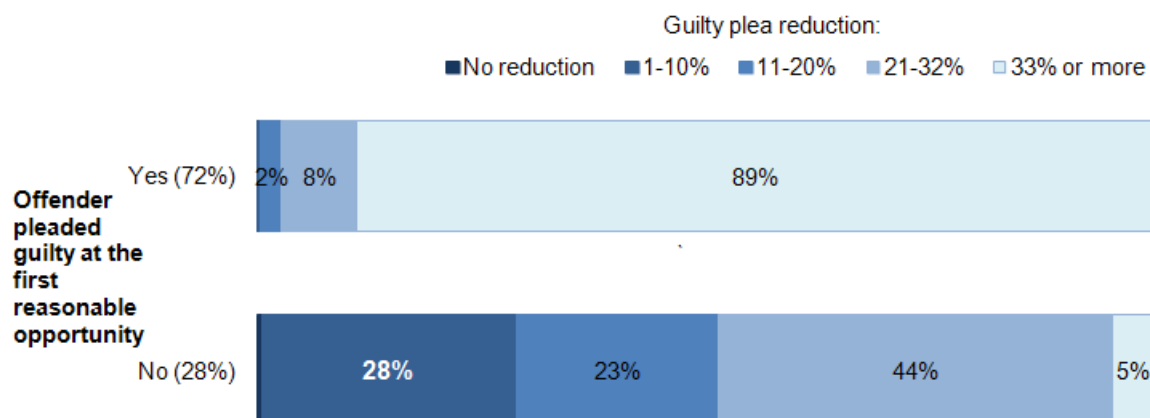
Guilty pleas

Defendants can enter a guilty plea at various stages in the court process. The court must take account of this and if the defendant enters one, 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 2014, about 90 per cent of offenders sentenced at the Crown Court pleaded guilty to the offence. The vast majority of these (81 per cent) admitted their guilt before or at the Plea and Case Management Hearing (PCMH) and, as a result of doing so, 76 per cent of these received the maximum reduction in sentence of one-third. 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.

Figure 6 shows that, of those pleading guilty at the first reasonable opportunity, 89 per cent received the maximum reduction in sentence. Only 5 per cent of offenders who did not plead guilty at the earliest reasonable opportunity received this level of reduction.

Figure 6: Offenders who pleaded guilty at the first reasonable opportunity and the reduction applied to their sentence, Crown Court, 2014



Over the last few years, the proportion of offenders who pleaded guilty at the PCMH has been increasing, from 74 per cent in 2011 to 81 per cent in 2013, remaining the same in 2014.

Departures from the Sentencing Council guidelines

Courts are under a legislative duty to impose a sentence within the *offence range* specified by sentencing guidelines, unless it is in the interests of justice to depart from this. However, 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.

Table 1 shows the overall extent that sentences covered by the definitive guidelines for assault, burglary and drug offences departed from the offence range, either above the range or below it.

Table 1: Proportion of sentences within and outside the offence range by definitive guideline, Crown Court, 2014

| Definitive guideline | National level totals | Below range | Within range | Above range |
|--|-----------------------|-------------|--------------|-------------|
| Assault Definitive Guideline | 13,000 | 1% | 97% | 2% |
| Burglary Offences Definitive Guideline | 9,800 | <0.5% | 97% | 3% |
| Drug Offences Definitive Guideline | 15,100 | 1% | 98% | 1% |

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1 Introduction

The Crown Court Sentencing Survey (CCSS) began 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.

The CCSS collected information directly from judges on the factors taken into account when they imposed a sentence at the Crown Court. It 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”.

The survey has helped the Sentencing Council to develop new guidelines, to make sure existing guidelines are working as intended and to inform the wider public about how sentencing decisions for offenders are made. 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 magistrates’ courts. The Council will undertake evaluation to help identify relevant factors for future guidelines and to help explore some of the findings presented in this report.

This publication provides information on sentences passed at the Crown Court in England and Wales between 1 January and 31 December 2014. For the first time, analysis for specific offences has been presented to demonstrate proportionality in sentencing, where offences that are more serious are punished with appropriate custodial sentences, and offences of lesser gravity are punished in a proportionate way to more serious offences. It also includes new analysis on whether or not offenders who pleaded guilty did so at the first reasonable opportunity and the subsequent reduction in sentence that was applied.

The survey provides a wealth of data covering the period October 2010 to March 2015, and this data will continue to be used for further research and analysis.

1.1 Background to the Crown Court Sentencing Survey

The CCSS was a census, not a sample survey. For every *new* criminal case sentenced at the Crown Court, the sentencing judge was expected to complete a survey form. When completing the form, the judge was required to consider only the most severe offence or **principal offence** being sentenced on that occasion. Where the sentence was not a new sentence, the judge was 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.² During 2014, the survey data were collected using twelve different **offence type** forms:

- arson and criminal damage;
- assault and public order;³
- burglary;³

² There are a limited number of court orders, which if breached, do receive a new sentence. In these cases, a form would have been 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>

³ For 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.

- driving offences;
- drug offences;³
- offences causing death;
- robbery and assault with intent to rob;
- indecent photographs of children;^{3,4}
- sexual offences (except indecent photographs of children);^{3,4}
- fraud, bribery and money laundering;^{3,5}
- theft offences;⁶ and
- other offences.⁷

Only one form was completed for each offender sentenced, the choice of which depended on the nature of the principal offence being sentenced. The forms varied by offence to reflect the fact that some of the factors taken into account will be specific to the type of offence committed; therefore, each offence type had its own form. Links to copies of the forms are available on the Council's website.⁸

Information has only been analysed on a form specific basis if that form has been in force for the full calendar year. Where possible, information covering the new forms has been incorporated with information for the old forms.⁹

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

- 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 document *A Guide to CCSS Statistics* (annex A), available on the Council's website.¹⁰

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 CCSS that have also affected the sentence.¹¹ 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

⁴ Came into force on 1 April 2014.

⁵ Came into force on 1 October 2014.

⁶ 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 form.

⁷ 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.

⁸ <http://www.sentencingcouncil.org.uk/publications/?type=publications&s=form&cat=crown-court-sentencing-survey>

⁹ Information completed on the new forms for sexual offences has been reported with information completed on the former sexual offences forms in use before 1 April. Similarly, information completed on the new form for fraud, bribery and money laundering has been presented with the information for theft offences.

¹⁰ <http://www.sentencingcouncil.org.uk/analysis-and-research/ccss-annual-2014-results/>

¹¹ 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.

both cases. Whilst the survey provided a detailed picture of cases sentenced at the Crown Court, it was not feasible to capture every factor considered by a judge when sentencing. However, it did 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 level of 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 and supplementary Excel tables. 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. The Excel data tables include the results presented in this publication in addition to previously published data, where appropriate, to inform trends. Both annexes and the supplementary tables are available on the Council's website.¹²

The following conventions have been applied to the results:

- percentages are provided to the nearest whole percentage except when a finer level of detail is required to show a trend. When the nearest whole percentage is zero, the convention "<0.5%" has been used and where zero per cent has been reported, this means nil;
- where totals have been provided, these have been calculated using unrounded data and then rounded to the nearest 100; therefore percentages shown on charts may not sum to 100; and
- average custodial sentence lengths in the publication are presented in years and months, although the underlying data used to produce charts is based in years, so figures in charts may show a slight difference to results presented in the commentary.

To enable others to use the data to conduct further research on sentencing and sentencing practice, anonymised record level datasets for each calendar year have been published on the website covering the period 2011 to 2014.

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

1.2 Survey response rates

Across all Crown Court locations in England and Wales in 2014, a survey form was completed for 59,034 sentences. Of these, it has been possible to confirm that 55,492 forms (94 per cent) relate to the principal offence through comparison with the administrative database, CREST.¹³ 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.

¹² <http://www.sentencingcouncil.org.uk/analysis-and-research/ccss-annual-2014-results/>

¹³ CREST (Crown Court Electronic Support System) is the case management system used by the Crown Court for tracking case progression.

In 2014, there were 86,297 sentences passed for principal offences at the Crown Court. The overall national response rate is therefore 64 per cent.¹⁴ However, response rates by Crown Court location vary; about 76 per cent of courts had 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 2014. This has been verified 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 2014. This is compared to the distribution of survey forms that were actually returned. Figures in this table have been rounded to the nearest 100.

Table 1.1: National level totals in the Crown Court by form type, 2014

| Form type | Expected national level totals | | Actual survey forms returned | |
|--|--------------------------------|------------|------------------------------|------------|
| | Number | Proportion | Number | Proportion |
| Arson and Criminal Damage | 1,500 | 2% | 800 | 2% |
| Assault and Public Order | 19,200 | 22% | 13,000 | 23% |
| Burglary Offences | 10,100 | 12% | 6,900 | 12% |
| Drug Offences | 15,700 | 18% | 10,200 | 18% |
| Driving Offences | 3,200 | 4% | 2,100 | 4% |
| Theft, Dishonesty and Fraud ^(a) | 14,100 | 16% | 8,300 | 15% |
| Other Offences | 9,800 | 11% | 5,300 | 10% |
| Offences Causing Death | 1,200 | 1% | 800 | 1% |
| Robbery | 4,300 | 5% | 3,100 | 6% |
| Sexual Offences ^(b) | 7,200 | 8% | 4,800 | 9% |
| All Offences | 86,300 | 100% | 55,500 | 100% |

Notes

- (a) Contains data collected on the Theft, Dishonesty and Fraud form and the new form for Fraud, Bribery and Money Laundering (which came into force on 1 October 2014).
- (b) Contains data collected on the old Sexual Offences form and the new forms for Sexual Offences and Indecent Photographs of Children (which came into force on 1 April 2014).

The expected totals were estimated by identifying the cases on CREST without a corresponding CCSS record and allocating these to the appropriate form type. This is the same methodology used in last year's publication (see annex B for further information).

¹⁴ 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 68 per cent.

2 Factors indicating the level of harm and level of 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 parameters:

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.

Three definitive guidelines have been in force for the whole of 2014. These are the definitive guidelines for assault offences, burglary offences and drug offences. The 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.¹⁵ These factors considered at the first stage of the decision-making process are referred to as step one 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.¹⁶ 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 in force for the whole of 2014, 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 does not cover definitive guidelines for sexual offences, environmental offences and fraud, bribery and money laundering offences because they were not in force for the full calendar year. It 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 on sentence outcomes.

¹⁵ With the exception of possession offences, offences covered in the drug offences guideline include a *non-exhaustive* list to assess the culpability. Harm is assessed using the indicative quantity of drug concerned.

¹⁶ 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>

2.1 Effect of factors indicating level of harm

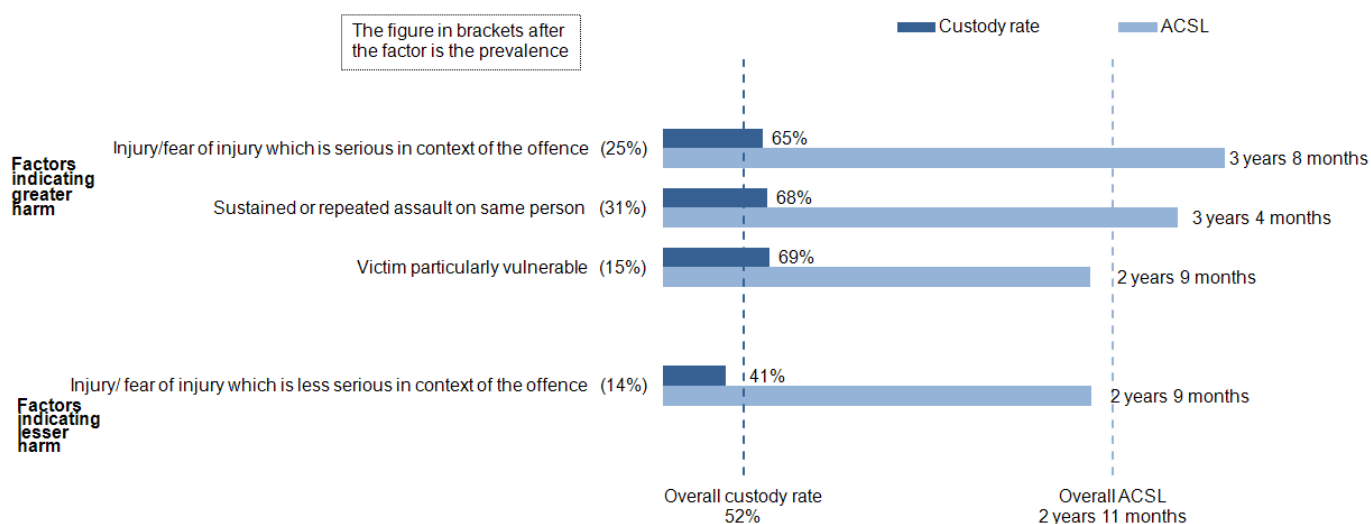
Summary Box 2.1: What is the effect of factors used to assess harm on custodial sentences?

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

However, where factors indicating **lesser harm** 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 (figure 2.1).

Figure 2.1 shows the relative importance of factors indicating the level of harm for offences covered by the assault definitive guideline.¹⁷ The figure provides the proportion of sentences where the factor was indicated as being taken into account (the *prevalence*), 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 prevalence helps to assess how frequently a factor was used relative to others. The custody rate provides a measure of the likelihood that an offender will be sent to prison. Finally, the ACSL measures how long, on average, their sentence is likely to be. Together, these three measures can be used to assess how the presence of these factors influences sentencing. 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, 2014



¹⁷ 71 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 custody rates ranged from 65 per cent for “injury/fear of injury which is serious in the context of the offence” to 69 per cent for “victim particularly vulnerable”. The most common factor was “sustained or repeated assault on same person” which was present in 31 per cent of cases. Across all assault definitive guideline offences, the custody rate was higher for cases with these factors than the overall custody rate (52 per cent).

In addition, when these factors were present, average custodial sentence lengths were typically longer than the average sentence length for these offences. For example, cases with “injury/fear of injury which is serious in the context of the offence” had the longest ACSL of 3 years 8 months. This was 9 months longer than the overall ACSL for these offences. The exception to this was the presence of “victim particularly vulnerable”, which was 2 months *shorter* than the overall average, although this was the factor associated with the highest custody rate.

The factor that was associated with the longest ACSL was “injury/fear of injury which is serious in the context of the offence”. The effect of this factor depends on the specific offence. This is shown in Table 2.1 which shows the prevalence, custody rate and ACSL for the three most serious assault offences sentenced at the Crown Court: causing grievous bodily harm with intent (section 18); inflicting grievous bodily harm (GBH section 20); and assault occasioning actual bodily harm (ABH).

Table 2.1: Effect of the greater harm factor “injury/fear of injury which is serious in the context of the offence” for selected assault offences, Crown Court, 2014

| Offence | Prevalence | Custody rate | ACSL |
|--|------------|--------------|-------------------|
| GBH with intent (section 18) | 31% | 95% | 9 years 10 months |
| GBH (section 20) | 34% | 65% | 2 years 7 months |
| ABH | 22% | 57% | 1 year 9 months |
| All offences covered by the guideline, where this factor was present | 25% | 65% | 3 years 8 months |

The effect of this factor is much more pronounced for the most serious assault offence of GBH with intent, compared to the others. Its effect on the ACSL in particular is capped by the maximum penalty for these offences, which is 5 years for GBH section 20 and ABH, but is life imprisonment for GBH with intent (although figures for ACSL exclude life sentences).

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 14 per cent of cases. Cases with this factor had a custody rate that was 11 percentage points lower than the overall average and an ACSL that was the same as that for the greater harm factor “victim particularly vulnerable”.

2.2 Effect of factors indicating level of culpability

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

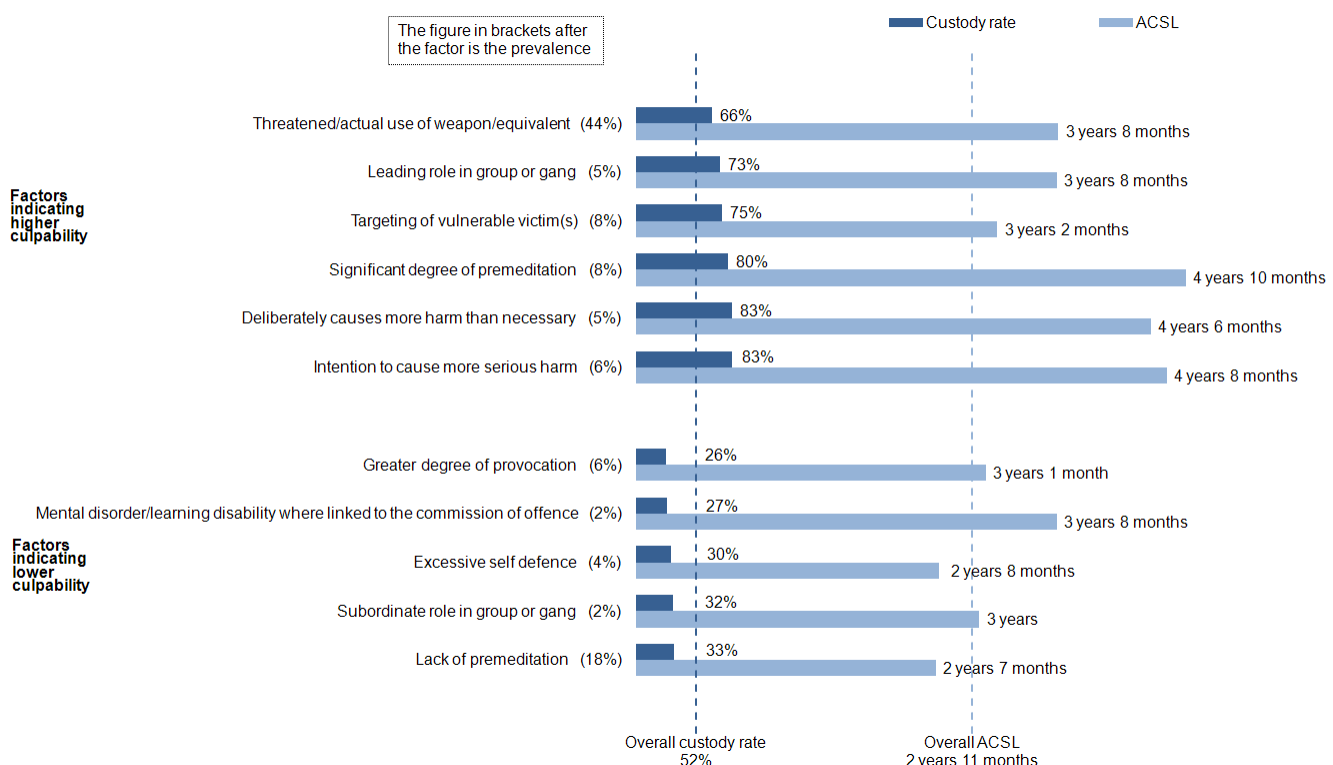
Where factors indicating **higher culpability** were taken into account, offenders were **more** likely to be sent to prison and **more** likely to be sent there for longer, compared to typical cases. These factors tended to produce **more** severe custodial sentences than greater harm factors.

In most cases, where factors indicating **lesser 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. However, **figure 2.2** shows there were some exceptions to this for assault offences.

Figure 2.2 shows information for the factors indicating the level of culpability for assault offences.¹⁸

Custody rates ranged from 66 per cent for cases where there was “threatened/actual use of [a] weapon/equivalent” (the most common culpability factor) to 83 per cent for those where there was “intention to cause more serious harm” and “deliberately causes more harm than necessary”. All the factors had a higher custody rate than the overall custody rate for these offences.

Figure 2.2: Assault offences: Factors indicating the level of culpability by prevalence, custody rate and average custodial sentence length (ACSL), Crown Court, 2014



¹⁸ 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.

In general, when these factors were present, average custodial sentence lengths were *substantially* longer than the overall ACSL for these offences. This difference ranged from 9 months for cases with “threatened/actual use of [a] weapon/equivalent” or “leading role in group or gang” to, almost 2 years for those with “significant degree of premeditation”. The only factor that was not associated with a substantially longer ACSL was “targeting of vulnerable victims”. Cases with this factor were only 3 months longer than the overall ACSL.

Compared to figure 2.1, the results in figure 2.2 show that in general, the presence of factors indicating higher culpability resulted in harsher sentences than when factors indicating greater harm were present; offenders were more likely to be sent to prison and for a longer time.

In contrast, the presence of factors indicating lower culpability resulted in lower custody rates compared to the overall custody rate of 52 per cent. They ranged from 26 per cent for “greater degree of provocation” to 33 per cent for “lack of premeditation” (the most common of these factors present in almost 1 in 5 cases).

For factors indicating lower culpability, the pattern for ACSL was not clear-cut. Most factors had an ACSL that was comparable or shorter than the overall ACSL for these offences; “lack of premeditation” had the shortest ACSL of 2 years 7 months. However, some factors indicating lower culpability had a *longer* ACSL compared to the overall ACSL for these offences. The most noticeable of these was when “mental disorder/learning disability where linked to commission of offence” was present. These cases had an ACSL of 3 years 8 months. This was 9 months *longer* than the overall ACSL for these offences. However, this was one of the least common factors, present in 2 per cent of cases and so this result should be treated with caution.

Similar results for burglary offences are available in the supplementary Excel tables.

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.¹⁹ 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 could potentially have been 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. 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.

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. 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 by 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

| | |
|---------------------------|--|
| Category 1 (most severe) | Greater harm and higher culpability |
| Category 2 | Greater harm and lower culpability; or lesser harm and higher culpability |
| Category 3 (least severe) | Lesser harm and lower culpability |

¹⁹ 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".

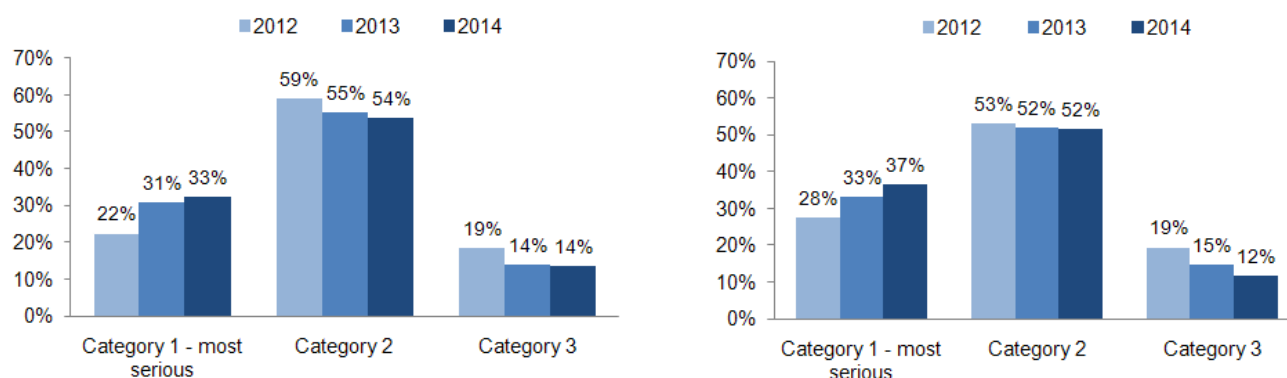
Summary Box 3.1: How “serious” were assault and burglary offences?

The majority of assault and burglary offences were category 2 offences, with elements of either 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 in less serious categories. 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 over the last three years. This includes all offences where the category of offence was completed on the form.

Figure 3.1: Distribution of category of offence for assault and burglary, Crown Court, 2012 to 2014

(a) Assault offences**(b) Burglary offences**

The figure shows that the distributions are both mound shaped, with the majority of these offences in category 2 (54 per cent of assault offences and 52 per cent of burglary offences in 2014). As shown in table 3.1, these are offences with elements of either greater harm and lower culpability or lesser harm and higher culpability.

Compared to 2012, there has been a moderate increase in seriousness as measured by the offence category, with a higher proportion of offences falling into category 1 and fewer in category 3. For example, 33 per cent of assault offences in 2014 were classed as the most serious (category 1). This is an increase of 11 percentage points since 2012. On the other hand, 14 per cent were in the least serious (category 3), a decrease of 5 percentage points compared to 2012. However, it is too early to determine if this is an emerging trend.

Drug offences

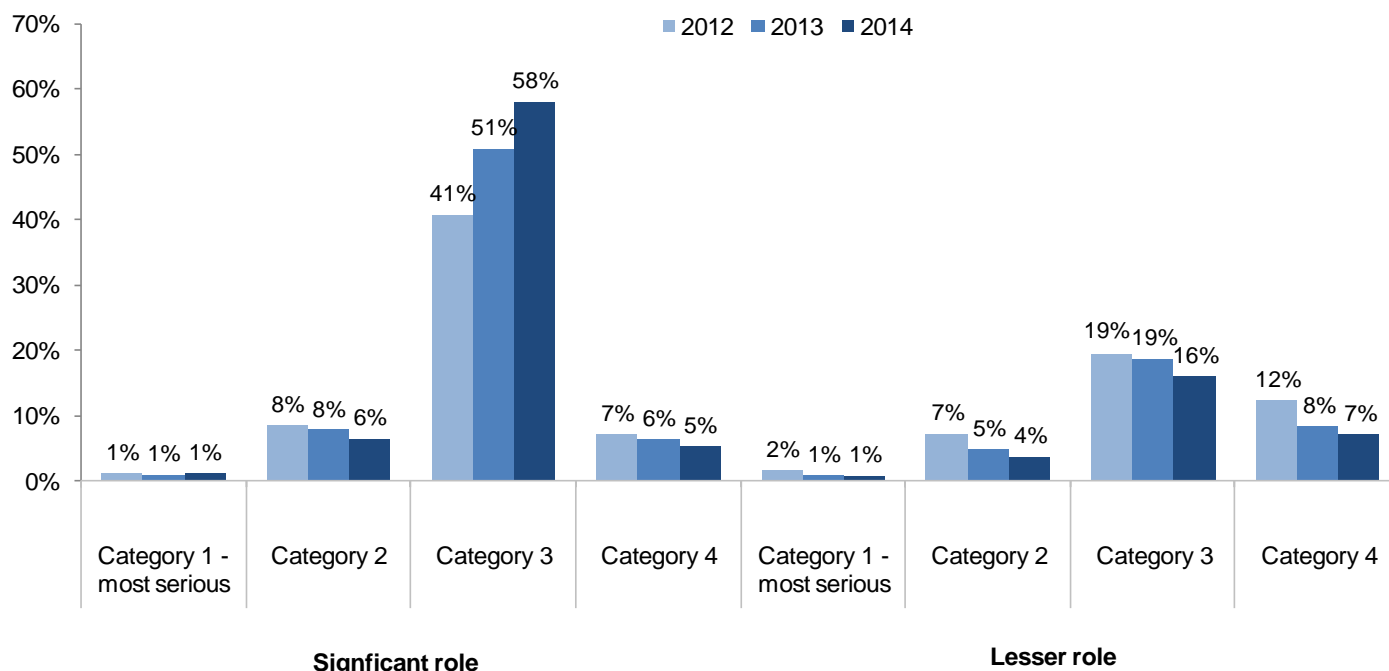
Possession and permitting premises to be used offences apply a different methodology to other drug offences for categorising harm and culpability. They therefore need to be considered separately to other drug offences. However, the volume of these offences sentenced at the Crown Court is too small for meaningful analysis by offence category. Although the statutory maximum for these offences allows them to be heard at the Crown Court, the majority are actually sentenced at magistrates' courts. These offences have therefore not been included below.

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

Since 2012, the majority of these offences were category 3 offences where the offender played a significant role in the offence. The proportion of offenders in this group has increased steadily over the last three years. In 2014, 58 per cent were in this group, which is an increase of 17 percentage points since 2012 (figure 3.2).

Figure 3.2 shows the offence category and role for drug offences other than possession and permitting premises. Proportions for leading role have not been shown as they are all 1 per cent or less, with negligible change over the period.

Figure 3.2: Distribution of category of offence and role for drug offences other than possession and permitting premises, Crown Court, 2012 to 2014



Notes

- (a) For these offences, the category of harm is determined by the quantity of drugs concerned, where category 1 is the most serious and category 4 is the least serious. Street dealers, where the offence is selling directly to users are classed as category 3 offences. In these cases, the quantity of drugs is less indicative of the harm caused and therefore the starting point is not based on quantity.
- (b) The culpability of the offender is demonstrated by their role which can either be leading, significant or lesser. The chart does not show figures for leading role because of their small volume.

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 the last few years, the proportion within this group has increased while it has decreased or remained the same in all other category/role groups. The second largest group were also category 3 offences but where the offender had a *lesser* role.

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.

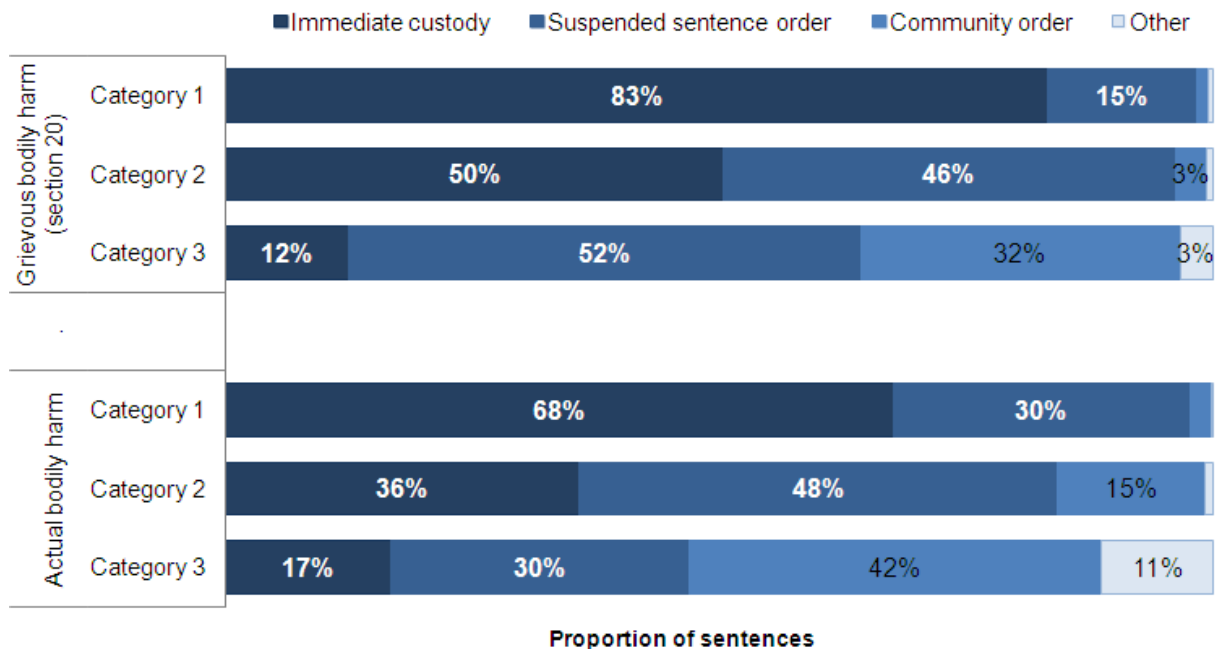
3.2 Effect of category of offence on the type of sentence passed

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 type of the offence and the category of offence. For example, the more serious grievous bodily harm section 20 offences (category 1) are more likely to result in immediate custody while the least serious ones (category 3) are more likely to result in a suspended sentence. In addition, the sentence outcomes for more severe offences are harsher than those for less severe offences, even if the category of offence is the same.

In general, a higher proportion of offenders with the highest level of culpability and harm (category 1) were sentenced to immediate custody than offenders with a lower level of culpability and harm. Figure 3.3 shows this for two different offences covered by the assault definitive guideline: the more serious offence of inflicting grievous bodily harm (GBH section 20) and the less serious offence of assault occasioning actual bodily harm (ABH).

Figure 3.3: Category of offence by sentence outcome for selected assault offences, Crown Court, 2014



The figure shows that an offender sentenced for a category 1 offence was more likely to be sentenced to immediate custody than one sentenced for a category 2, or lower offence. For GBH section 20, a custodial sentence was the most common outcome for both category 1 and category 2 offences, while a suspended sentence order was most common for category 3 offences. This contrasts with ABH which is less serious

than GBH section 20. Here, a custodial sentence was also more common for category 1 offences, a suspended sentence was more common for category 2 and a community order for category 3. In addition, sentences for GBH section 20 (the more serious of the two offences) were more severe than for ABH. This is shown by the higher proportion of offenders sentenced to immediate custody for a category 1 GBH section 20 offence compared to a category 1 ABH offence.

This result demonstrates an important function of sentencing guidelines regarding the promotion of proportionality across the range of related offences. This means that serious offences are punished with appropriate custodial sentences, but offences of lesser gravity are punished at a lower but proportionate level.

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

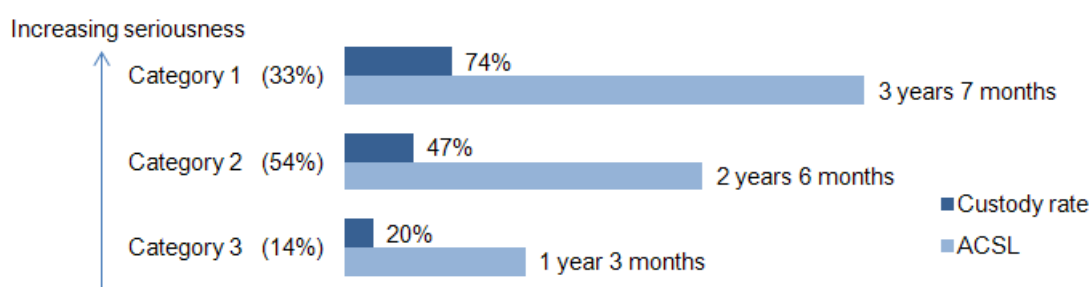
Summary Box 3.4: How does the category of offence affect the severity of custodial sentence passed?

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**).

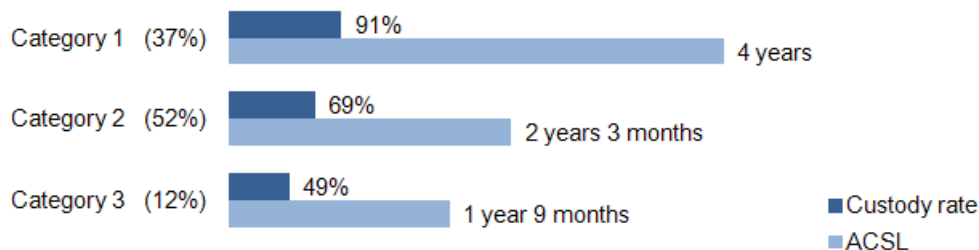
Figure 3.4 shows the relationship between the severity of the custodial sentence passed, as measured by the proportion of offenders sent to immediate custody (the custody rate) and the average custodial sentence length (ACSL) *before* any reduction for a guilty plea, and the level of harm and culpability, as reflected by the offence category, for assault and burglary offences.²⁰

Figure 3.4: Category of offence by proportion of sentences, custody rate and average custodial sentence length (ACSL), Crown Court, 2014

(a) Assault and public order offences



²⁰ Information for drug offences has not been shown in this section. This is because, in almost all the seriousness categorisations for drug offences, the overall number of those sentenced to immediate custody was very low making inferences unreliable.

(b) Burglary offences

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 considered less culpable for the offence.

For example, for offenders sentenced for burglary offences, 91 per cent of those in the highest category were sentenced to immediate custody with an ACSL of 4 years. This compares to 49 per cent of cases in the lowest category, with an ACSL of 1 year 9 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 recent and relevant previous convictions, is looked at in more detail.

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

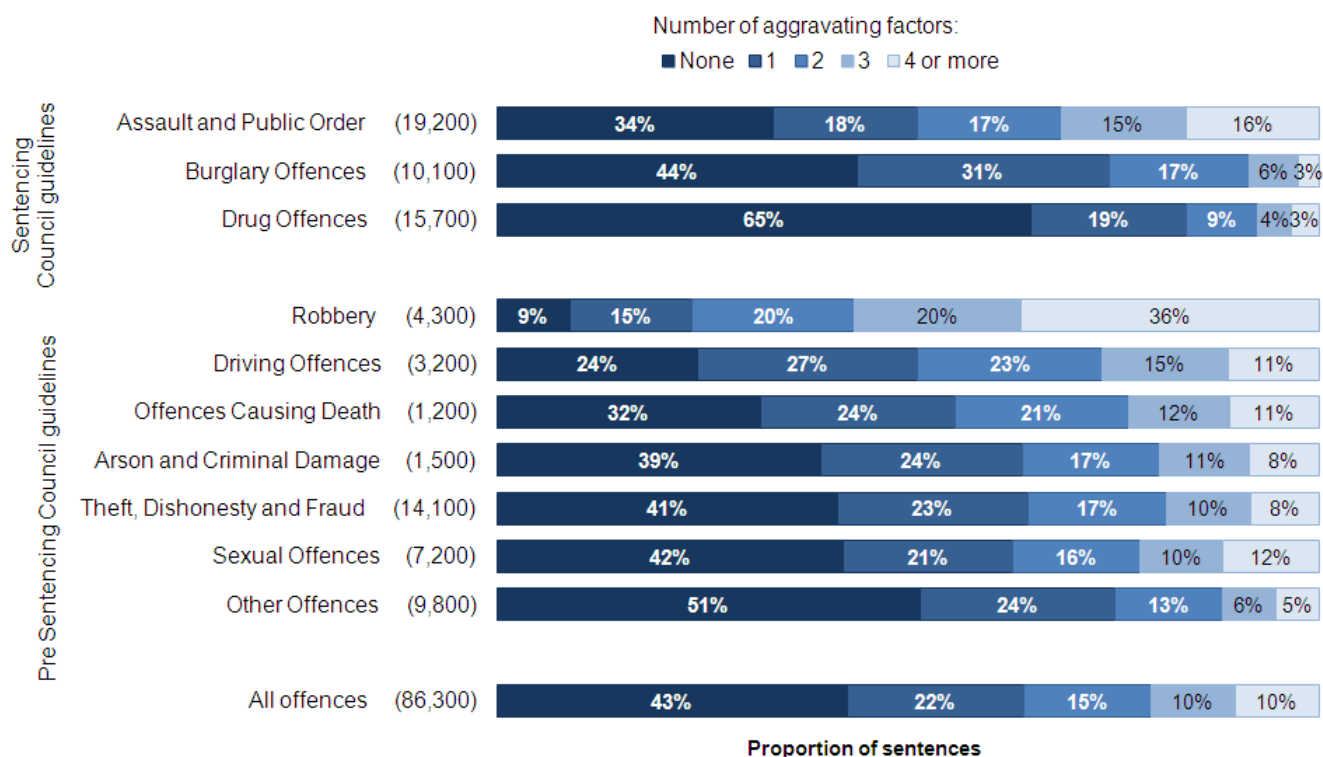
Summary Box 4.1: How likely is an offender to have aggravating or mitigating factors that influence their sentence, and if they do, how many do they usually have?

The presence of aggravation was most likely for robbery offences and least likely for drug offences. In general, when aggravation was present, it was more likely to be for a single aggravating factor. The only exception to this related to 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 arson and criminal damage offences, and least likely for burglary offences. Across all offence types, when mitigating factors were present, it was most likely to be 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 the figure as it is covered separately in section 4.4. Note that in this section, the offence type for sexual offences and theft, dishonesty and fraud will include both the new and the old forms.

Figure 4.1: Number of aggravating factors taken into account (excluding presence of recent and relevant previous convictions) by offence type, Crown Court, 2014



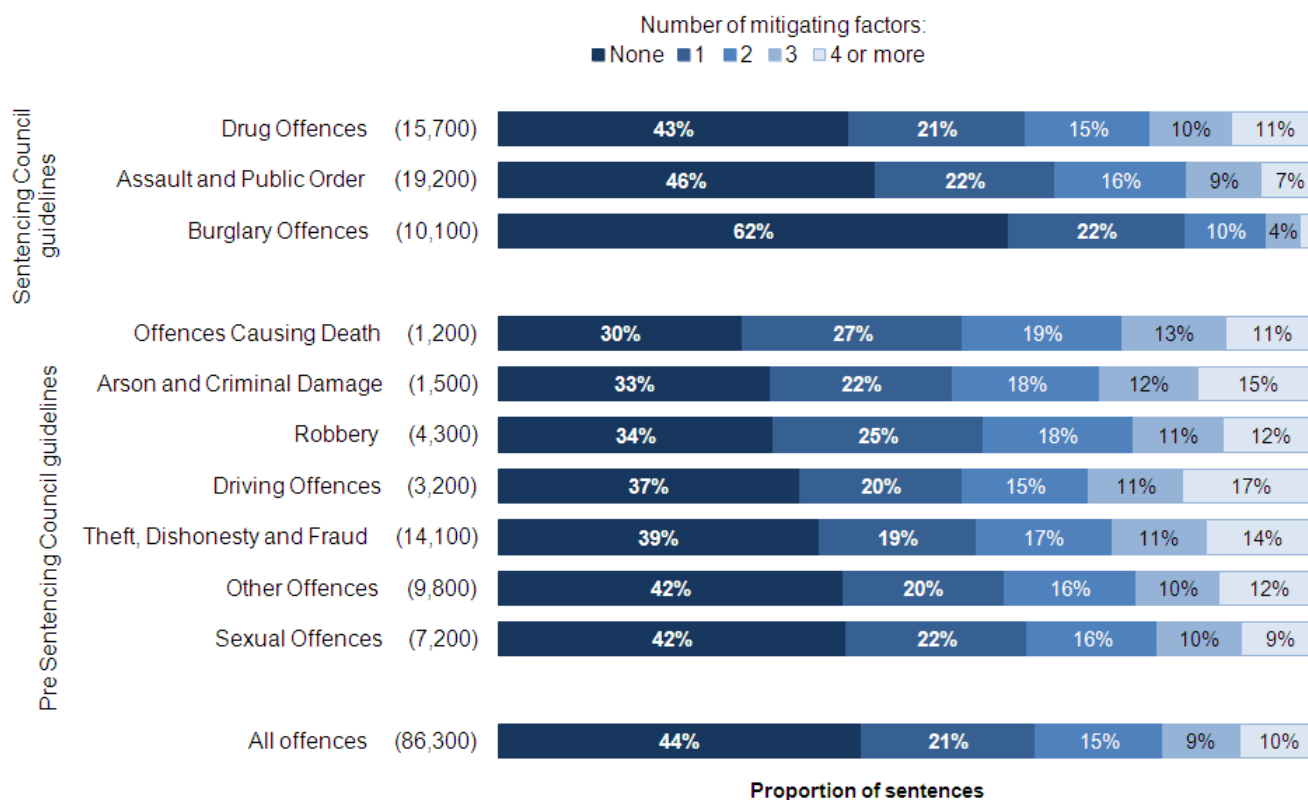
Robbery offences had the highest number of aggravating factors: 36 per cent of robbery cases had four or more aggravating factors and only 9 per cent did not have any aggravating factors. The current sentencing guideline for robbery offences was produced by the Council's predecessor body and therefore does not assess seriousness using the Sentencing Council's harm and culpability model. The Council is currently developing a new guideline for robbery offences which will follow the usual model.

Drug offences, on the other hand, had the lowest number of aggravating factors; only 3 per cent of drug offenders had four or more aggravating factors and 65 per cent did not have any aggravating factors. Drug offences are sentenced under a Sentencing Council guideline, which looks at the class and quantity of the drug, and the extent to which the offender was involved (their role). Other aggravating features, with the exception of recent and relevant previous convictions, may therefore be less significant as a result of the approach taken by this guideline.

Where aggravation was taken into account, most often it was 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 31 per cent for burglary offences. The exception to this were robbery offences which were most likely to have four or more factors.

Figure 4.2 shows similar information for mitigating factors. In new definitive guidelines introduced by the Sentencing Council, a lack of recent and relevant previous convictions can be considered 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 absence of recent and relevant previous convictions) by offence type, Crown Court, 2014



The presence of mitigation was most likely in those sentenced for offences causing death, and arson and criminal damage offences. The proportion of cases in these offence groups with some mitigating factors was, respectively, 70 and 67 per cent. They are both also sentenced with a guideline produced by the Council's predecessor body.

Mitigation was least likely in cases of burglary, where 62 per cent of those sentenced did not have any mitigating factors. Burglary offences are sentenced under a Sentencing Council guideline, and because some factors are considered at step one of the process, they are least likely to take mitigation into account at this stage. Figure 4.2 shows this is similarly the case for assault and drug offences which are also sentenced under guidelines produced by the Sentencing Council.

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 27 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.

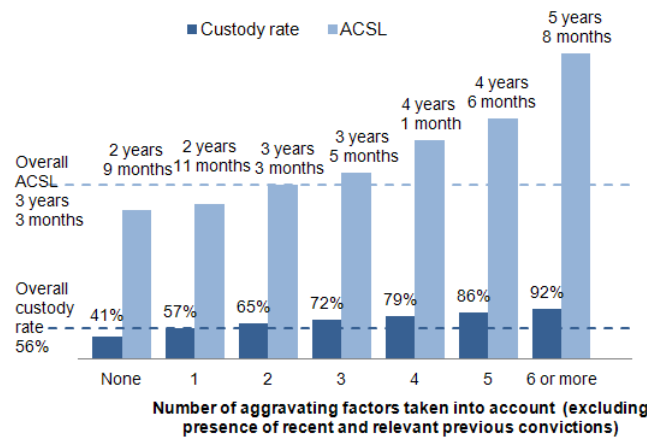
Conversely, offenders with **many mitigating factors** taken into account in their case are **less likely** to be sent to prison. However, if they *are* sent to prison, there is not much variability in the time they spend there, compared to cases with fewer factors.

When the two kinds of factors are compared, the presence of additional aggravating factors appears to have a much stronger influence on sentence length than additional mitigating factors (**figure 4.3**).

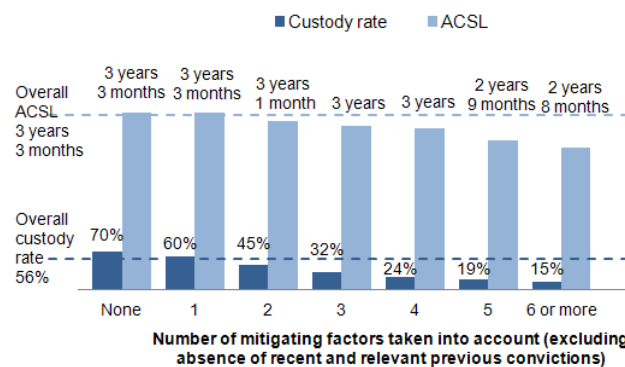
Figure 4.3 shows how the number of aggravating and mitigating factors present influences both the likelihood of being sent to immediate custody (the custody rate), and the average custodial sentence length (ACSL) across all offence types. As in section 4.1, the presence or absence of recent and relevant previous 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 factors taken into account, by custody rate and average custodial sentence length (ACSL), Crown Court, 2014

(a) Aggravating factors



(b) Mitigating factors



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 7 percentage points. In contrast, the presence of a single aggravating factor only increased the ACSL by less than 2 months, compared to when there were no aggravating factors present. There were noticeable increases when there were four factors and again when there were six or more factors. Both the custody rate and the ACSL for six or more factors were 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 reduces 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 five of them. The figure demonstrates that aggravating factors have a much stronger influence on the sentence length than mitigating factors. However, although several aggravating and mitigating factors may often be applicable in a given case, 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.

4.3 Effect of aggravating and mitigating factors on custodial sentences

The pattern and frequency 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, more in-depth 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 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 on which 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 included.²¹

²¹ 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>

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

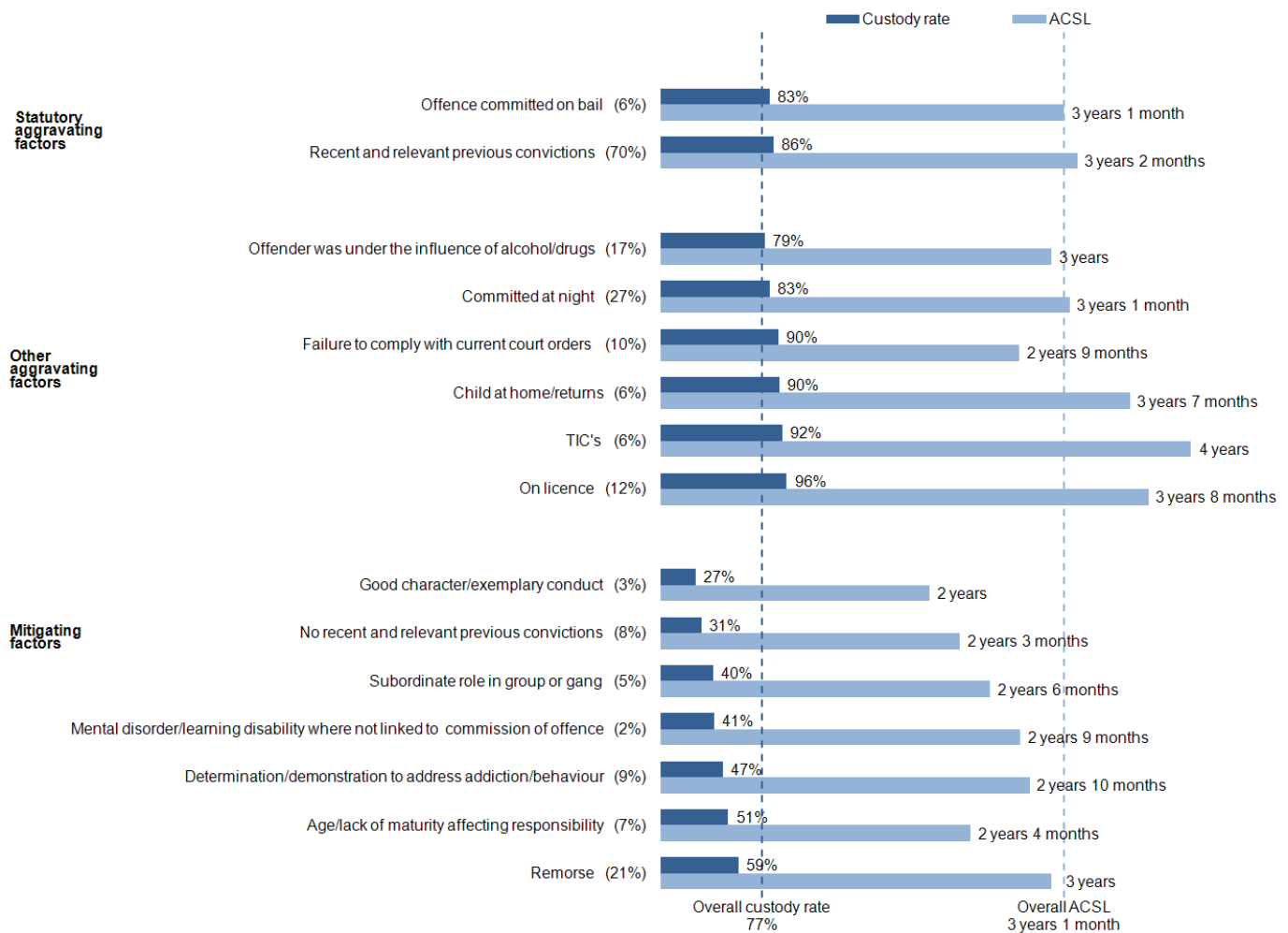
In most cases, when aggravating factors were taken into account, offenders were **more** likely to be sent to prison, compared to domestic burglary offences in general. The presence of these factors also made offenders **more** likely to be sent to prison for longer. The exceptions were when the “offender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

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.²² The figure provides the proportion of cases 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 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.**

²² 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, are available for all burglary offences covered by the guideline in the supplementary Excel tables.

Figure 4.4: Domestic burglary: Aggravating and mitigating factors by prevalence, custody rate and average custodial sentence length (ACSL), Crown Court, 2014



The most common aggravating factor in domestic burglary was “recent and relevant previous convictions” which was present in 70 per cent of cases. The second most common aggravating factor was “offence committed at night”, however this was 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 (TIC’s)”²³ had the longest ACSL of 4 years. This was almost a year longer than the overall

²³ 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>

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 4 months shorter than the average. However, cases with this factor present resulted in relatively high custody rates that were 13 percentage points above the overall custody rate.

Figure 4.4 also shows that the most common mitigating factor was “remorse”,²⁴ taken into account in 21 per cent of cases. The next most common factors were “determination/demonstration to address addiction/behaviour” (present in only 9 per cent of cases) and “no recent and relevant previous convictions”²⁵ (present in 8 per cent of cases).

The presence of mitigating factors reduced the likelihood 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 27 per cent for cases in which there was “good character and/or exemplary conduct” (present in only 3 per cent of cases) to 59 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 was “good character and/or exemplary conduct”, 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 1 month 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.²⁶ 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.²⁷

²⁴ 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.

²⁵ The proportion of offenders with the mitigation factor “no recent and relevant previous convictions” is not the same as the proportion where the aggravating factor of previous convictions was not indicated.

²⁶ s.143(2) Criminal Justice Act 2003

²⁷ 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.

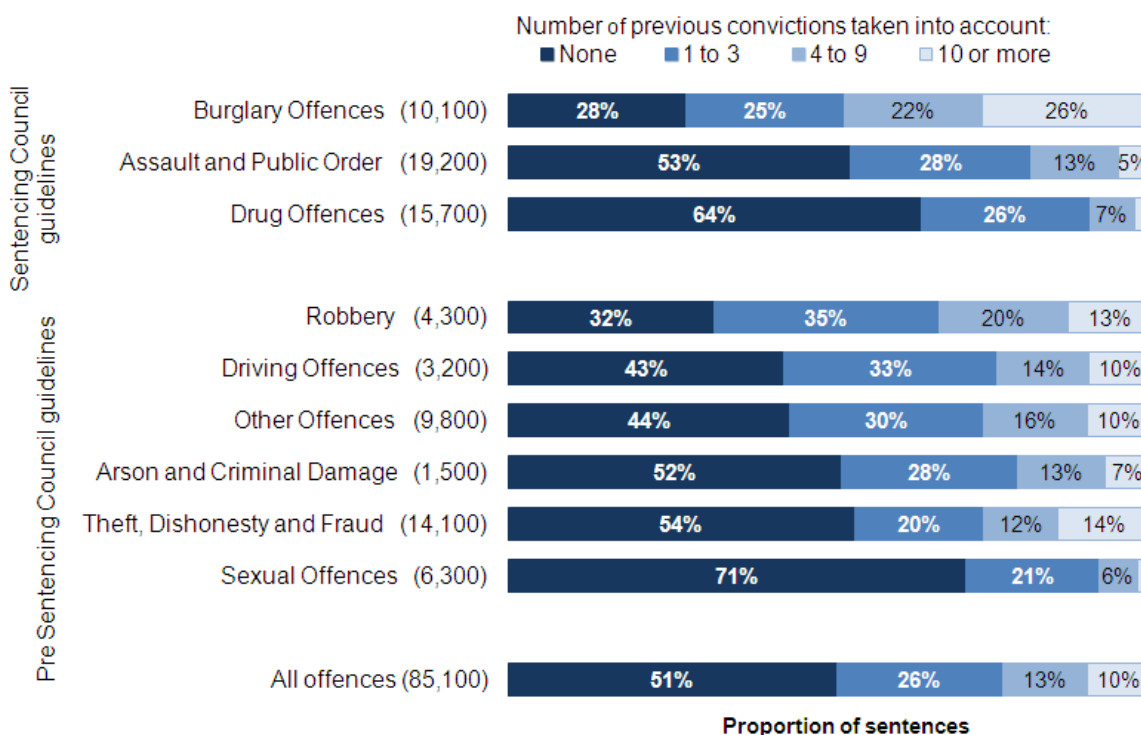
Summary Box 4.4: How likely is an offender to have previous convictions that influence their sentence and how does their presence affect their sentence?

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 sentenced 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 recorded on a different basis and are therefore shown separately in figure 4.6.

Figure 4.5: Number of previous convictions taken into account, by offence form type, Crown Court, 2014



Notes

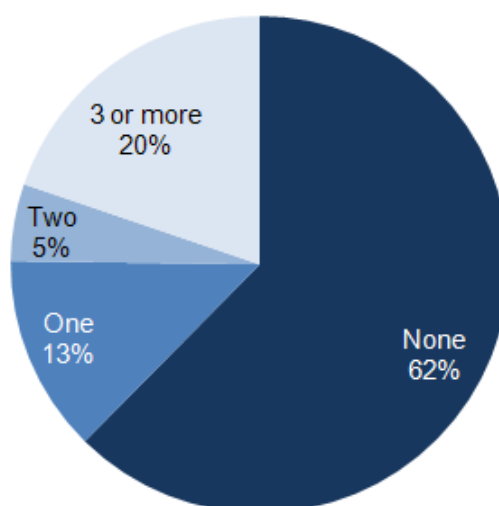
- (a) This figure excludes information for offences causing death which are recorded on a different basis. This is shown in figure 4.6.
- (b) The offence form type for theft, dishonesty and fraud and for sexual offences includes both the new and the old forms.

The figure shows that overall, approximately half the offenders sentenced in 2014 in the Crown Court had previous convictions taken into account. However, it also shows that the likelihood that judges took this into

account depended on the type of offence that they were sentencing. 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 (29 per cent).

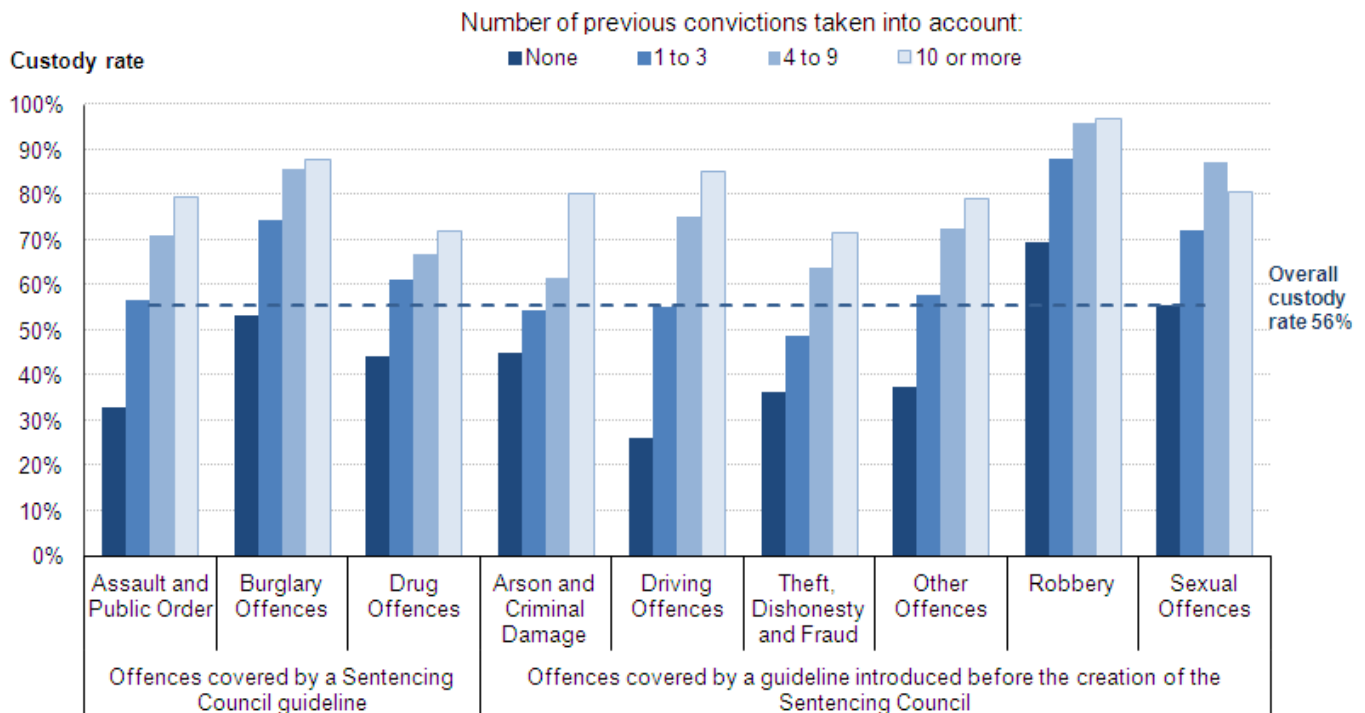
The information is also shown in figure 4.6 for offences causing death, which are recorded on a different basis.

Figure 4.6: Number of previous convictions taken into account for offences causing death, Crown Court, 2014



The figure shows that most offenders sentenced for offences causing death had no previous convictions taken into account. When previous convictions are taken into account they may not necessarily be for the same offence but they will have been relevant to the crime being sentenced in some way. For example, for group or gang murders, the offenders may have previously been convicted of possession of weapons, firearms, or some kind of drugs offence. In other cases, previous assaults may be considered relevant and therefore taken into account. Finally, offences causing death include driving offences that resulted in a death and relevant driving offences may be taken into account if these were recent or relevant.

Figure 4.7 shows the relationship between the proportion of offenders who were sentenced to immediate custody (the custody rate) and the number of 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, 2014**Notes**

- Results for offences causing death have been excluded from this chart as they are recorded on a different basis.
- The offence form type for theft, dishonesty and fraud and for sexual offences includes both the new and the old forms.
- It is very rare for sexual offences to have 10 or more previous convictions taken into account so the reduction in the custody rate between "4 to 9" and "10 or more" is probably due to low volumes.

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 85 per cent for offenders with 10 or more.

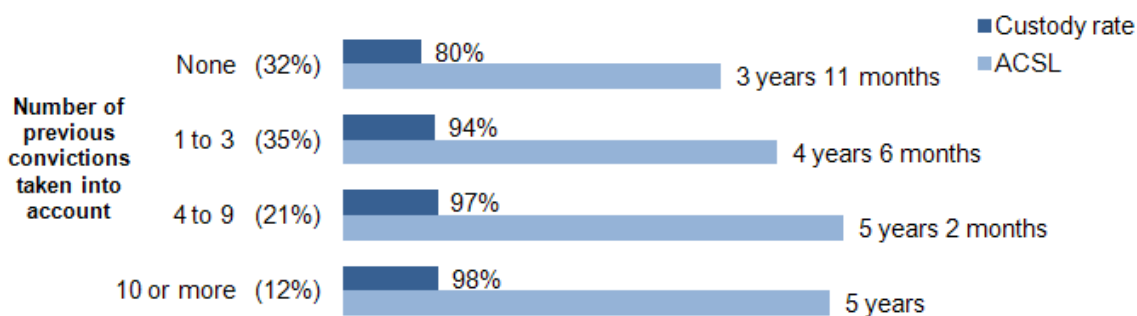
In general, where an offender already had at least one recent and relevant previous conviction, any further ones taken into account by the judge had less of an impact on the likelihood of being sentenced to immediate custody. The exception to this was arson and criminal damage where the presence of 10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

Once an offender had between 1 and 3 previous convictions, their custody rate was either comparable to, or above the overall custody rate. The exception to this was sentences for theft offenders, where an offender was only more likely to be sent to prison, compared to offenders overall, when they had at least 4 previous convictions.

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 isolate the actual effect of previous convictions on custodial sentence lengths better, the level of seriousness for specific offences also needs to 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 offences²⁸ is shown in figure 4.8. Level 2 offences were chosen as these represent the bulk of robbery offences (63 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, 2014



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. In general, the ACSL also increases with the number of previous convictions. However, there is a slight decrease in ACSL of 2 months, when the number of previous convictions taken into account increased from “4 to 9” to “10 or more”. This is probably because only 12 per cent of cases (approximately 180 survey forms) are in this category, and the figures are therefore likely to be volatile. In the 2013 publication, the ACSL increased by 8 months between the groups “4 to 9” to “10 or more”.

²⁸ The Sentencing Guidelines 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.²⁹ 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)³⁰ 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.³¹ 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 a 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 a 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**).

Over the last few years, the proportion of offenders who pleaded guilty at the earliest stage has been increasing.

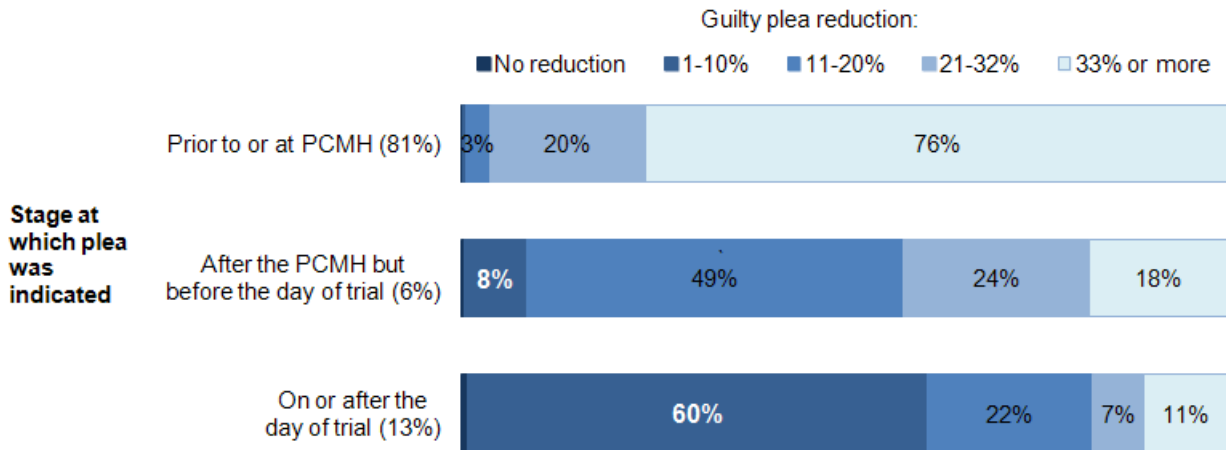
In 2014, about 90 per cent of offenders sentenced at the Crown Court pleaded guilty to the offence. Figure 5.1 shows the reduction given to offenders who entered a guilty plea by the stage the plea was entered.

²⁹ s.144 Criminal Justice Act 2003

³⁰ Predecessor body of the Sentencing Council

³¹ 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&cat=definitive-guideline&s&topic=guilty-plea>

Figure 5.1: Offenders pleading guilty by the stage at which the plea was entered and the reduction applied to their sentence, Crown Court, 2014

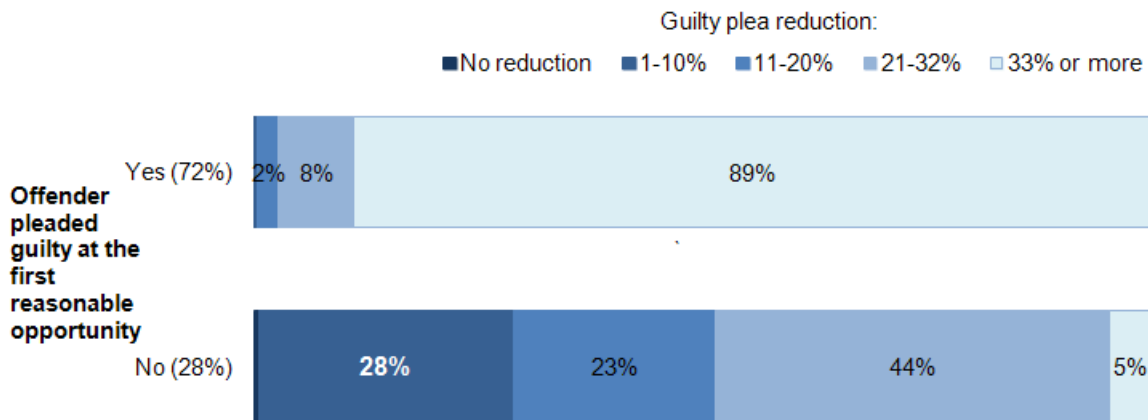


The vast majority of offenders who entered a guilty plea did so either prior to, or at, the PCMH. Over the last few years, the proportion of offenders who pleaded guilty at this stage has been increasing, from 74 per cent in 2011 to 81 per cent in 2013, remaining the same in 2014. The increase seen is mainly from the group that previously pleaded after the PCMH but before the day of trial. The proportion of offenders who pleaded guilty at this stage decreased from 11 per cent in 2011 to 6 per cent in 2014. The proportion of those pleading on or after the day of the trial has remained stable, within the range of 13 to 15 per cent.

For those offenders who entered a plea either prior to or at the PCMH, 84 per cent pleaded guilty at the first reasonable opportunity. The highest level of reduction (a third) was granted in over three quarters of cases (76 per cent) for offenders who pleaded guilty either prior to or at the PCMH. 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 over 80 per cent of cases.

Figure 5.2 shows that 89 per cent of offenders who pleaded guilty at the first reasonable opportunity received the highest level of reduction. This compares to 5 per cent of offenders who did not plead guilty at the first reasonable opportunity.

Figure 5.2: Offenders who pleaded guilty at the first reasonable opportunity and the reduction applied to their sentence, Crown Court, 2014



When considering the results in figures 5.1 and 5.2, 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 reduction.

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*.³²

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 CCSS 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 CCSS form.

Courts are not required to stay within the relevant category range; however, they are under a legislative duty³³ to impose a sentence that is within the offence range, **unless it would be contrary to the interests 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 2014, 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 where possible. Sentences where the offender was a youth (under 18 years of age), the sentence imposed was a 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 CCSS forms were completed.

³² During 2014, three new definitive guidelines came into force: *Sexual Offences Definitive Guideline*, *Environmental Offences Definitive Guideline* and the *Fraud, Bribery and Money Laundering Offences Definitive Guideline*. However, these guidelines have not been in force for the whole calendar year and are therefore not analysed in this section.

³³ 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 CCSS 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, 2014

| Offence | National level totals | Below range | Within range | Above range | Bottom of offence range | Top of offence range |
|---|-----------------------|-------------|--------------|-------------|-------------------------|----------------------|
| Assault occasioning actual bodily harm | 6,100 | 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% | 2% | 3 years | 16 years |
| Common Assault ^(c) | 2,000 | 0% | 98% | 2% | Discharge | 26 weeks |
| Inflicting grievous bodily harm/Unlawful wounding | 3,400 | <0.5% | 98% | 2% | Community Order | 4 years |
| Total (across all Assault Definitive Guideline offences) | 13,000 | 1% | 97% | 2% | - | - |

Notes

- (a) Sentences for youths and those resulting in a life sentence or hospital order have been excluded.
- (b) Results are not shown for offences where there were fewer than 200 survey forms completed.
- (c) Common assault includes racially or religiously aggravated common assault, which has a statutory maximum of 2 years' custody. However, the cases above the range were not recorded as racially or religiously aggravated. Therefore, the offences recorded as being above the range may be a result of data recording error in the way the offence has been recorded. 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 2014.

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 2014. For this offence, just under 92 per cent of sentences fell within the offence range.

For this offence, there is a clear difference between the frequency with 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: GBH with intent: Proportion of cases by greater harm and higher culpability factors that were below, within and above the offence range, Crown Court, 2014

| 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% | 32% | 67% |
| Sustained or repeated assault on the same person | 25% | 41% | 73% |
| Factors indicating higher culpability | | | |
| Significant degree of premeditation | 10% | 24% | 47% |
| Threatened/actual use of weapon/equivalent | 48% | 79% | 87% |

Note

(a) Results are not shown for cases where fewer than 200 records had the factor indicated.

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. Many 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.

The Sentencing Council’s work programme includes time to review the Assault Definitive Guideline. This follows on from an evaluation of the guideline. A report on the evaluation together with the scope of the guideline review will be published in due course.

Sentences for common assault and inflicting grievous bodily harm/unlawful wounding had the smallest proportion of departures from the offence range in the guideline, with 98 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 a 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 CCSS 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, 2014

| Offence | National level totals | Below range | Within range | Above range | Bottom of offence range | Top of offence range |
|---|-----------------------|-------------|--------------|-------------|-------------------------|----------------------|
| Domestic burglary | 7,400 | <0.5% | 97% | 3% | Community Order | 6 years |
| Non-domestic burglary | 2,200 | <0.5% | 98% | 2% | Fine | 5 years |
| Total (across all Burglary Definitive Guideline offences) | 9,800 | <0.5% | 97% | 3% | - | - |

Notes

- (a) Sentences for youths and those resulting in a life sentence or hospital order have been excluded.
 (b) Results are not shown for offences where there were fewer than 200 survey forms completed.

Over all sentences covered by the new guideline, 97 per cent fell within the offence range in 2014.

Sentences for “non-domestic burglary” and “domestic burglary” both had a similar proportion of sentences falling within the range (97 per cent for domestic burglary, 98 per cent for non-domestic burglary).

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, 2014

| 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 | 8% | 86% | 6% | Fine | 51 weeks |
| Possession of a controlled drug Class B | 1,000 | 0% | 99% | 1% | Discharge | 26 weeks |
| Production of a controlled drug Class B/Cultivation of a cannabis plant | 3,100 | 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 | 5,800 | <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 | 3,700 | <0.5% | 99% | <0.5% | Fine | 10 years |
| Total (across all Drug Definitive Guideline offences) | 15,100 | 1% | 98% | 1% | - | - |

Notes

- (a) Sentences for youths and those resulting in a life sentence or hospital order have been excluded.
- (b) Results are not shown for offences where there were fewer than 200 survey forms completed.

Over all sentences covered by the drug offences guideline, 98 per cent fell within the offence range in 2014.

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, 86 per cent fell within the offence range, 8 per cent were below and 6 per cent were above the offence range. The frequency with which specific aggravating and mitigating factors have been used for sentences outside and within the offence range is not shown as there are insufficient records to show.

It should be noted that the majority of “possession of controlled drug class A” offence cases would be heard in magistrates’ courts, therefore these results, which have also been observed in previous years, should not be seen as indicative of cases across both the Crown Court and magistrates’ courts. For example, in the 2013 publication, 85 per cent of cases fell within the offence range, with 7 per cent below and 7 per cent above. However, analysis for both the Crown Court and magistrates’ courts showed that in 2013, less than 1 per cent were above and 16 per cent were below the range.³⁴

³⁴ Sentencing Council Annual Report 2013/14 available at <http://www.sentencingcouncil.org.uk/publications/item/sentencing-council-annual-report-201314/>