

## CONSULTATION STAGE RESOURCE ASSESSMENT: BREACH OF DISQUALIFICATION FROM ACTING AS A DIRECTOR AND BREACH OF DISQUALIFICATION FROM KEEPING AN ANIMAL

### 1 INTRODUCTION

1.1 This document fulfils the Council's statutory duty to produce a resource assessment which considers the likely effect of its guidelines on the resources required for the provision of prison places, probation and youth justice services.<sup>1</sup>

### 2 RATIONALE AND OBJECTIVES FOR NEW GUIDELINE

2.1 Guidelines are not currently available for all types of breach, and there is variation in the format of the guidelines which do exist and their scope, with some guidance available to magistrates' courts in the form of Magistrates' Courts Sentencing Guidelines but not in the Crown Court. A survey of 216 magistrates and district judges was conducted in November 2014, to gather information on sentencing breaches and the usefulness of current breach guidelines.<sup>2</sup> Respondents indicated that they would like a comprehensive summary of all breach order sentence guidelines, presented in a consistent format and clearly identifiable as a breach guideline.

2.2 The Council decided that breach guidelines should be issued as a single definitive guideline to consolidate and improve guidance and ensure a more consistent approach to sentencing breach of orders. The Council decided to include the highest volume offences and those where it was thought consistency of approach to sentencing could be achieved through a guideline. The format of the breach guidelines brings them into line with the rest of the Sentencing Council guidelines where possible, using the stepped approach to sentencing and assessing harm and culpability, and any factors increasing seriousness.

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<sup>1</sup> Coroners and Justice Act 2009 section 127.

<sup>2</sup> The sample was self selected, and relatively small, meaning that we cannot generalise from these findings to the general population of magistrates and district judges. The findings do, however, give us an indication of how an engaged and interested group use the current guidance and their needs and preferences with reference to future guidelines.

### 3 SCOPE

3.1 This resource assessment covers the following offences:

- Breach of disqualification from acting as a director; and,
- Breach of disqualification from keeping an animal.

3.2 The maximum sentence for breach of disqualification from acting as a director, as set out in the Company Directors Disqualification Act 1986, is two years' custody in the Crown Court and six months' in the magistrates' court.

3.3 The maximum sentence in the Animal Welfare Act 2006, for breach of disqualification from keeping an animal, is 51 weeks' imprisonment. However, as this is a summary only offence, and magistrates' courts sentencing powers have not been extended to 12 months, the usual six month maximum applies.

3.4 Other breach offences, for which the Council is proposing new guidelines, are covered under separate resource assessments.

### 4 CURRENT SENTENCING PRACTICE

#### **Breach of disqualification from acting as a director**

4.1 Since 2009 the number of adult offenders sentenced for breach of disqualification from acting as a director has remained fairly low, with fewer than 50 offenders sentenced each year (see figure 1).<sup>3</sup> In 2015, approximately 20 adult offenders were sentenced for this offence. The majority of offenders are sentenced in the Crown Court (81 per cent in 2015).

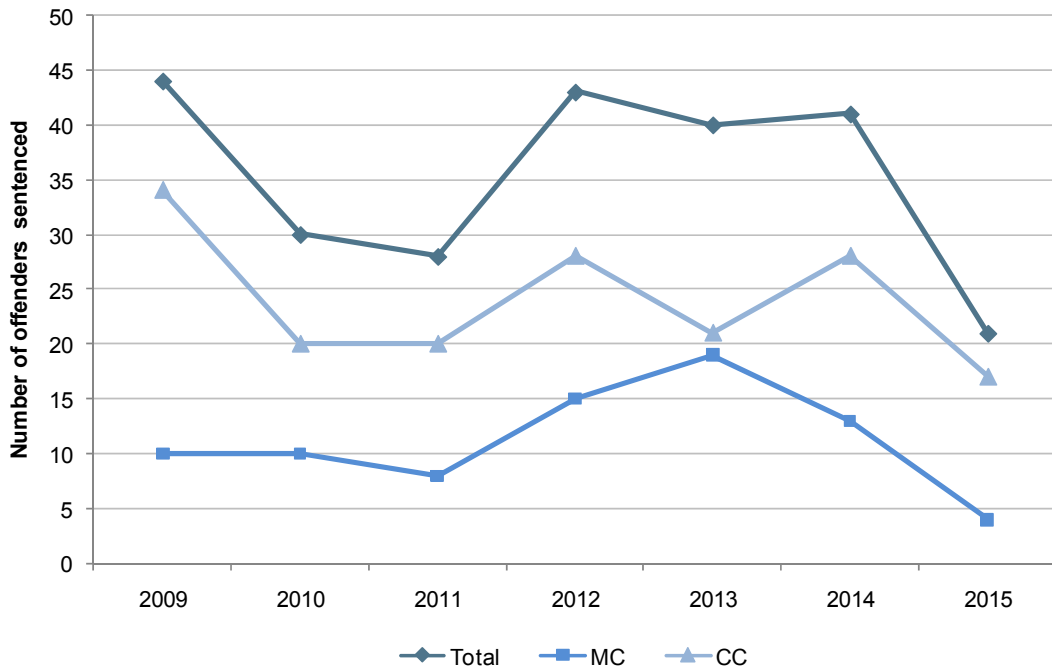
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<sup>3</sup> Source: Ministry of Justice Court Proceedings Database (CPD). For details of data collection and methodology please see:

<https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2015>

The figures given relate to persons for whom these offences were the principal offences for which they were dealt with. When a defendant has been found guilty of two or more offences it is the offence for which the heaviest penalty is imposed. Where the same disposal is imposed for two or more offences, the offence selected is the offence for which the statutory maximum penalty is the most severe. Every effort is made to ensure that the figures presented are accurate and complete. However, it is important to note that these data have been extracted from large administrative data systems generated by the courts and police forces. As a consequence, care should be taken to ensure data collection processes and their inevitable limitations are taken into account when those data are used.

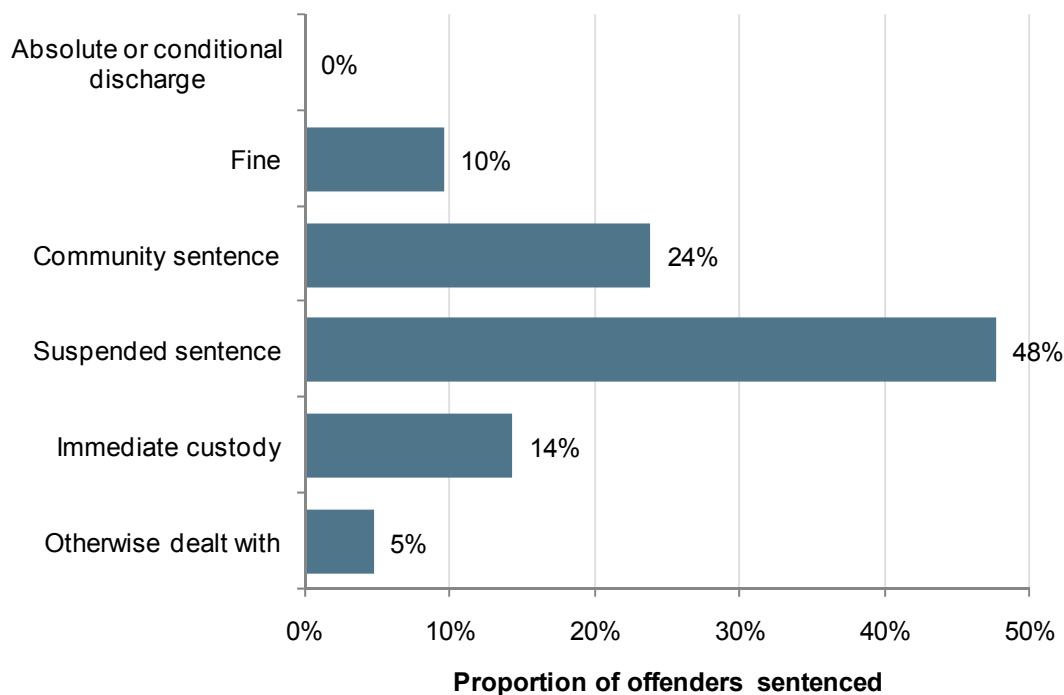
**Figure 1: Number of adult offenders sentenced for breach of disqualification from acting as a director, 2009-2015**



**Source: Ministry of Justice CPD**

4.2 A suspended sentence has remained the most frequent disposal since 2009. In 2015, just under half of offenders received a suspended sentence, and just under a quarter received a community order (see figure 2). Fewer than five offenders were sentenced to immediate custody.

**Figure 2: Proportion of adult offenders sentenced for breach of disqualification from acting as a director, by sentence outcome, 2015<sup>4</sup>**



**Source: Ministry of Justice CPD**

4.3 During the period 2009 to 2015, the average<sup>5</sup> custodial sentence length for this offence was one year (prior to any guilty plea reduction).<sup>6</sup>

#### **Breach of disqualification from keeping an animal**

4.4 Between 2009 and 2013 the number of adult offenders sentenced for breach of disqualification from keeping an animal increased from approximately 40 in 2009 to 100 in 2013, before decreasing to 70 in 2015. The vast majority of these offences are sentenced in magistrates' courts (over 98 per cent in 2015).

4.5 Fines were the most common sentence in 2015 (comprising just over a quarter of offenders sentenced), closely followed by suspended sentences and community orders (see figure 3). Five offenders received an immediate custodial sentence.

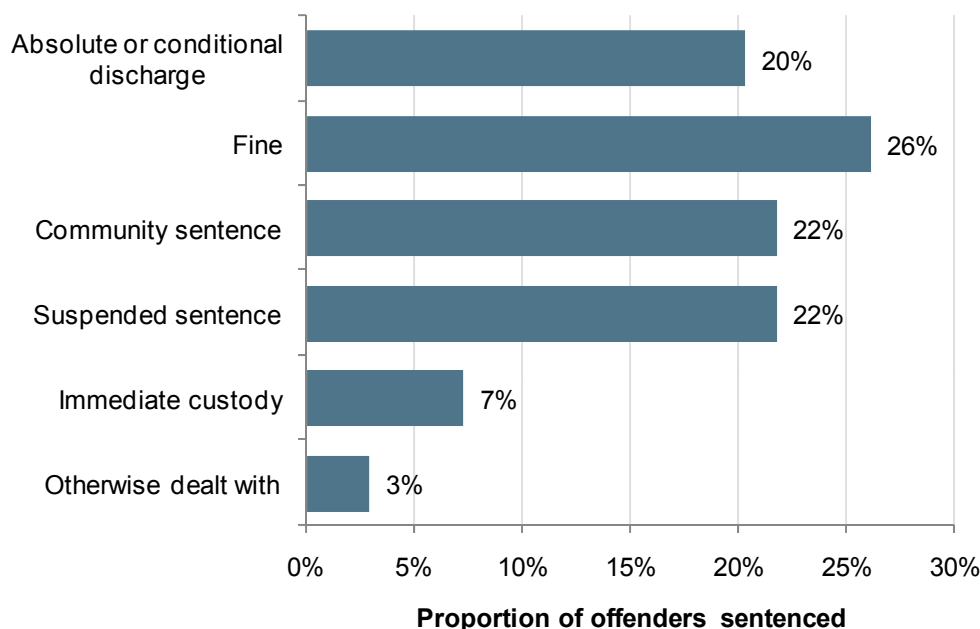
<sup>4</sup> The category 'Otherwise dealt with' includes: one day in police cells; disqualification order; restraining order; confiscation order; travel restriction order; disqualification from driving; recommendation for deportation; compensation; and other miscellaneous disposals.

<sup>5</sup> The mean has been taken as the average throughout this document.

<sup>6</sup> This has been estimated based on the stage at which offenders entered a plea and the reduction given, as found in the Crown Court Sentencing Survey 2014.

4.6 During the period 2009 to 2015, the average custodial sentence length for this offence was four months (prior to any guilty plea reduction).<sup>6</sup>

**Figure 3: Proportion of adult offenders sentenced for breach of disqualification from keeping an animal, by sentence outcome, 2015<sup>7</sup>**



**Source: Ministry of Justice CPD**

## 5 KEY ASSUMPTIONS

5.1 To estimate the resource effect of a new guideline, an assessment is required of how it will affect aggregate sentencing behaviour. This assessment is based on the objectives of the new guideline, and draws upon analytical and research work undertaken during guideline development. However, strong assumptions must be made, in part because it is not possible precisely to foresee how sentencers' behaviour may be affected across the full range of sentencing scenarios. Any estimates of the impact of the new guideline are therefore subject to a large degree of uncertainty.

5.2 Historical data on changes in sentencing practice following the publication of guidelines can help inform these assumptions, but since each guideline is different, there is no strong evidence base on which to ground assumptions about behavioural change. The assumptions thus have to be based on careful analysis of how current

<sup>7</sup> The category 'Otherwise dealt with' includes: one day in police cells; disqualification order; restraining order; confiscation order; travel restriction order; disqualification from driving; recommendation for deportation; compensation; and other miscellaneous disposals.

sentencing practice corresponds to the guideline ranges presented in the proposed new guideline, and an assessment of the effects of changes to the structure and wording of the guideline.

5.3 The resource impact of the new guideline is measured in terms of the change in sentencing practice that is expected to occur as a result of the new guideline. Any future changes in sentencing practice which are unrelated to the publication of the new guidelines are therefore not included in the estimates.

5.4 In developing sentence levels for the different breach guidelines existing guidance and data on current sentence levels has been considered. A number of first instance and Court of Appeal transcripts have been reviewed for each breach, but these generally reflect cases at the upper end of seriousness. Transcripts are not available for magistrates' court proceedings where the vast majority of these cases, and almost all breaches of disqualification from keeping an animal, are sentenced.

5.5 While data exists on the number of breaches and the sentences imposed, it is difficult to establish how current breach cases would be categorised across the levels of culpability and harm proposed in the new guidelines, due to a lack of data available regarding the seriousness of current cases. As a consequence it is difficult to ascertain how sentence levels may change under the new guideline.

5.6 It therefore remains difficult to estimate with any precision the impact the guideline may have on prison and probation resources. To support the development of the guideline and mitigate the risk of the guideline having an unintended impact, views will be sought during the consultation process, which will provide more information on which to base the final resource assessment accompanying the definitive guideline.

## **6 RESOURCE IMPACTS**

This section should be read in conjunction with the draft guidelines available at: <http://www.sentencingcouncil.org.uk/consultations/>.

6.1 The guidelines are written with current sentencing practice in mind and therefore it is not anticipated there will be any impact on correctional resources. In addition, due to the low volume of these offences and the fact that only a very small proportion of offenders receive a custodial sentence, any potential impact would be minimal.

## 7 RISKS

7.1 Two main risks have been identified:

### **Risk 1: The Council's assessment of current sentencing practice is inaccurate**

7.2 An important input into developing sentencing guidelines is an assessment of current sentencing practice. The Council uses this assessment as a basis to consider whether current sentencing levels are appropriate or whether any changes should be made. Inaccuracies in the Council's assessment could cause unintended changes in sentencing practice when the new guideline comes into effect.

7.3 This risk is mitigated by information that is gathered by the Council as part of the guideline development and consultation phase.

### **Risk 2: Sentencers do not interpret the new guideline as intended**

7.4 If sentencers do not interpret the guideline as intended, this could cause a change in the average severity of sentencing, with associated resource effects (including the potential for anticipated changes to some categories of the guideline to affect other categories where no change was intended).

7.5 The Council takes a number of precautions in issuing new guidelines to try to ensure that judges interpret them as intended. Sentencing ranges are agreed on by considering sentencing data, where it exists, in conjunction with Council members' experience of sentencing.

7.6 Following the release of the guidelines, explanatory material will be provided to read alongside the guidelines; consultees can also feedback their views of the likely effect of the guidelines, and whether this differs from the effects set out in the consultation stage resource assessment. The Council also uses data from the Ministry of Justice to monitor the effects of its guidelines to ensure any divergence from its aims is identified as quickly as possible.