

CONSULTATION STAGE RESOURCE ASSESSMENT: BREACH OF A PROTECTIVE ORDER, BREACH OF A CRIMINAL BEHAVIOUR ORDER, BREACH OF A SEXUAL HARM PREVENTION ORDER, AND FAILING TO COMPLY WITH A NOTIFICATION REQUIREMENT

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.¹

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.² 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.

¹ Coroners and Justice Act 2009 section 127.

² 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 a Protective Order;
- Breach of a Criminal Behaviour Order (or Anti Social Behaviour Order);
- Breach of a Sexual Harm Prevention Order (or Sexual Offences Prevention Order); and,
- Failing to comply with a notification requirement.

3.2 These offences have been grouped together for the purpose of this resource assessment as they share the same statutory maxima of five years' imprisonment and involve the protection of individuals or the wider community in some way.

3.3 Other breach offences, for which the Council is proposing new guidelines, will be covered under separate resource assessments.

4 CURRENT SENTENCING PRACTICE

Breach of a Protective Order

4.1 Restraining orders were introduced in 1997, and in 2009 amendments to legislation enabled the court to impose them in a much wider range of circumstances.³ Non-molestation orders protect relevant persons in family proceedings. Collectively these are known as 'protective orders'.

4.2 From 2009 onwards, there was a substantial increase in the number of offenders sentenced for breaching each of these orders.⁴ Prior to 2009 breaches of these orders were excluded from the count of court proceedings due to recording issues, and so the increase seen is partly a result of improvements in recording practice.⁵ However, it most likely also reflects the increase in the number of restraining

³ http://www.cps.gov.uk/legal/p_to_r/restraining_orders/

⁴ 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>

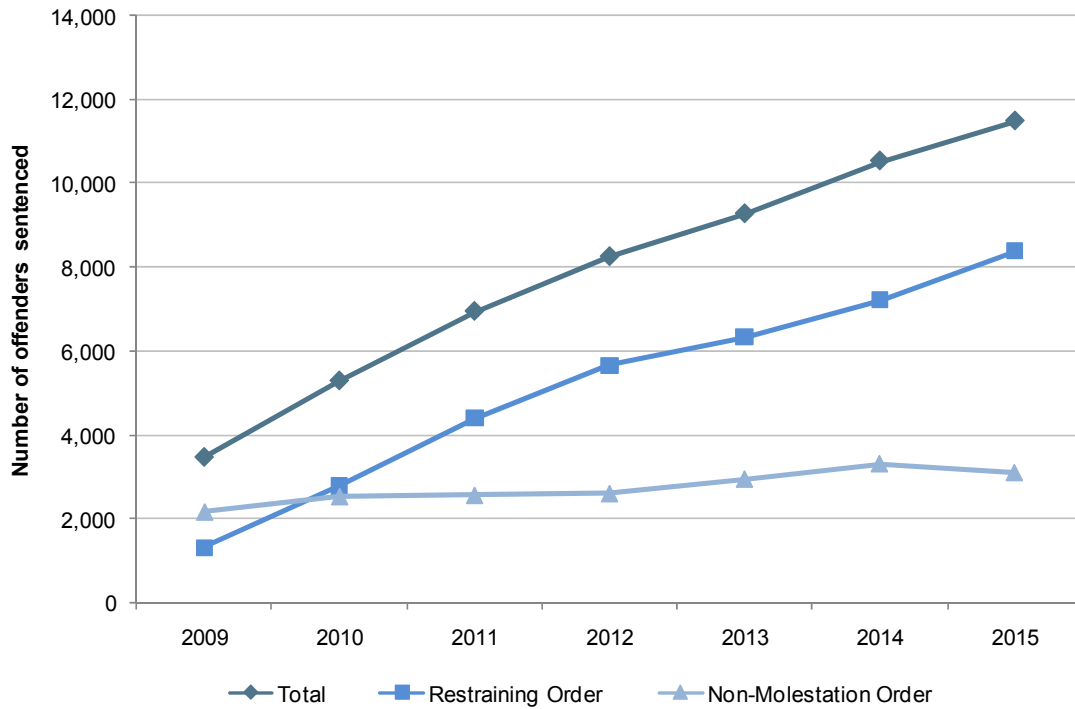
The figures given relate to persons for whom these offences were the principal offences for which they were dealt with. When a defendant has been found guilty of two or more offences it is the offence for which the heaviest penalty is imposed. Where the same disposal is imposed for two or more offences, 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.

⁵ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/524418/a-guide-to-criminal-justice-statistics.pdf

and non-molestation orders imposed. Figure 1 shows the number of offenders sentenced for breaching these orders. In 2015 the majority (86 per cent) of these breaches were sentenced in the magistrates' court.

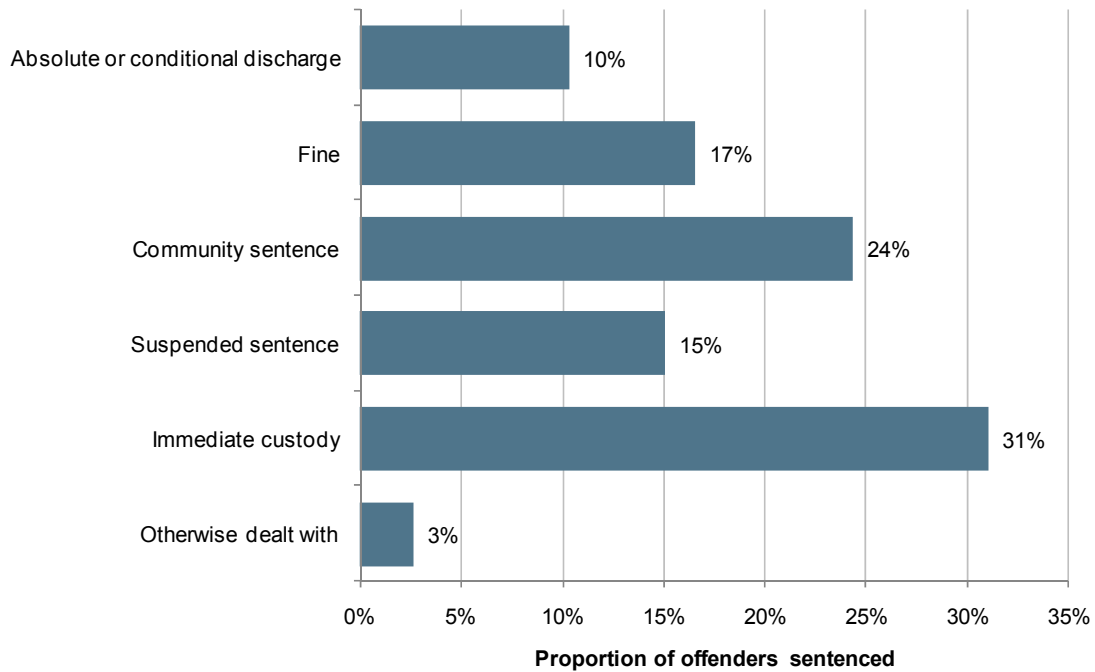
Figure 1: Number of adult offenders sentenced for breach of a protective order, 2009-2015



Source: Ministry of Justice CPD

4.3 Figure 2 shows the proportion of offenders sentenced for breaching a protective order by sentence outcome. In 2015 approximately 3,600 offenders received immediate custody (31 per cent) and 2,800 offenders received a community sentence (24 per cent).

Figure 2: Proportion of adult offenders sentenced for breach of a protective order, by sentence outcome, 2015⁶



Source: Ministry of Justice CPD

4.4 Figure 3 shows the distribution of custodial sentence lengths in 2015, for those who received an immediate custodial sentence. Offenders who plead guilty are given a reduction in their sentence. In general, the earlier an offender enters their plea in the court proceedings, the larger the reduction in sentence. In order to compare current sentence lengths with those proposed in the new guideline, it is necessary to look at sentence lengths before any reduction for a guilty plea.⁷

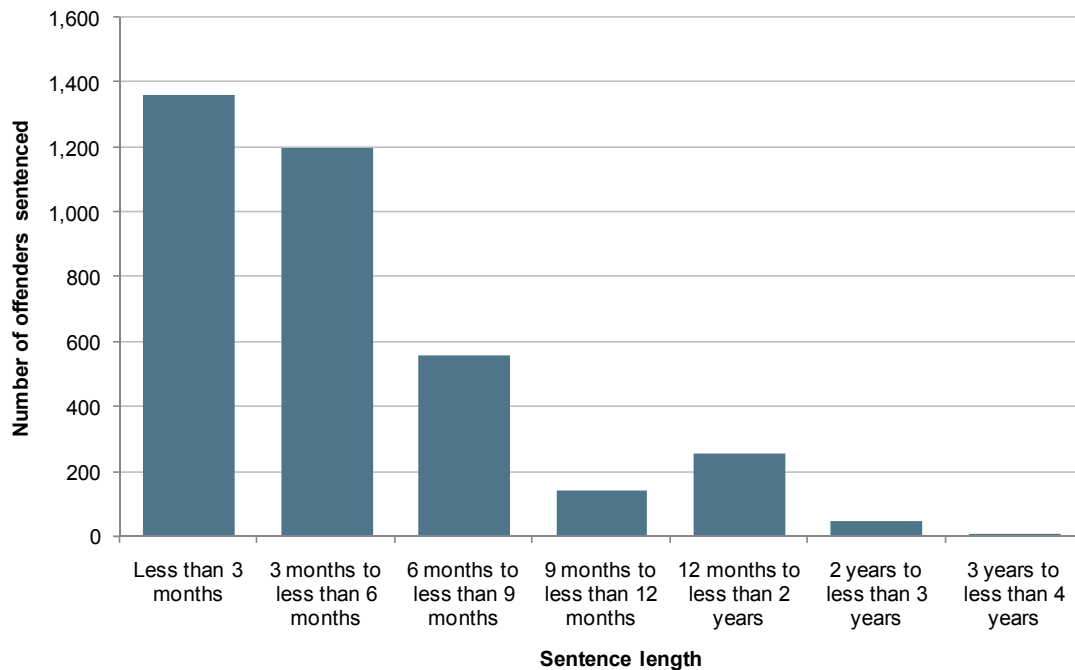
4.5 Figure 3 shows that approximately 2,600 offenders (72 per cent) received a sentence of less than six months, and only around 50 offenders (one per cent) received a sentence of two years or more, before any reductions for a guilty plea. The average⁸ custodial sentence length was six months (prior to any guilty plea reduction).

⁶ 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.

⁷ 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.

⁸ The mean has been taken as the average throughout this document.

Figure 3: Number of adult offenders sentenced to immediate custody for breach of a protective order, by sentence length, before any reductions for a guilty plea, 2015



Source: Ministry of Justice CPD data adjusted with the Crown Court Sentencing Survey 2014

Breach of a Criminal Behaviour Order (or Anti Social Behaviour Order)

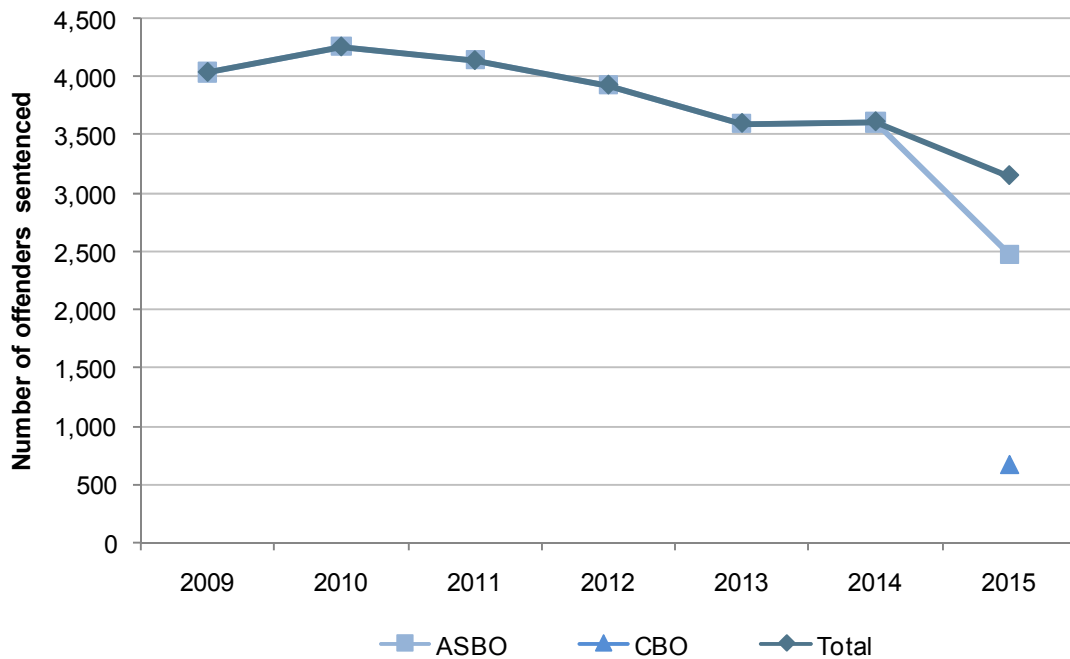
4.6 Anti Social Behaviour Orders (ASBOs) were introduced by section 1 of the Crime and Disorder Act 1998 in England and Wales and came into force in April 1999. In October 2014 ASBOs on conviction were replaced by Criminal Behaviour Orders (CBOs; through the Anti-social Behaviour, Crime and Policing Act 2014), although existing ASBOs are still in force.⁹

4.7 Breach of a CBO or an ASBO is a criminal offence in its own right. Since 2009 there has been a reduction in the number of adults sentenced for breaching an ASBO (see figure 4).¹⁰ For breach of a CBO, data is only available for 2015. The majority of these breach offences (93 per cent in 2015) are sentenced at the magistrates' court.

⁹ The latest published data relates to ASBOs issued up to the end of December 2013. These relate to ASBOs issued on application and conviction: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/355103/anti-social-behaviour-order-statistical-notice-2013.pdf

¹⁰ Due to recording issues data is only available back to 2009.

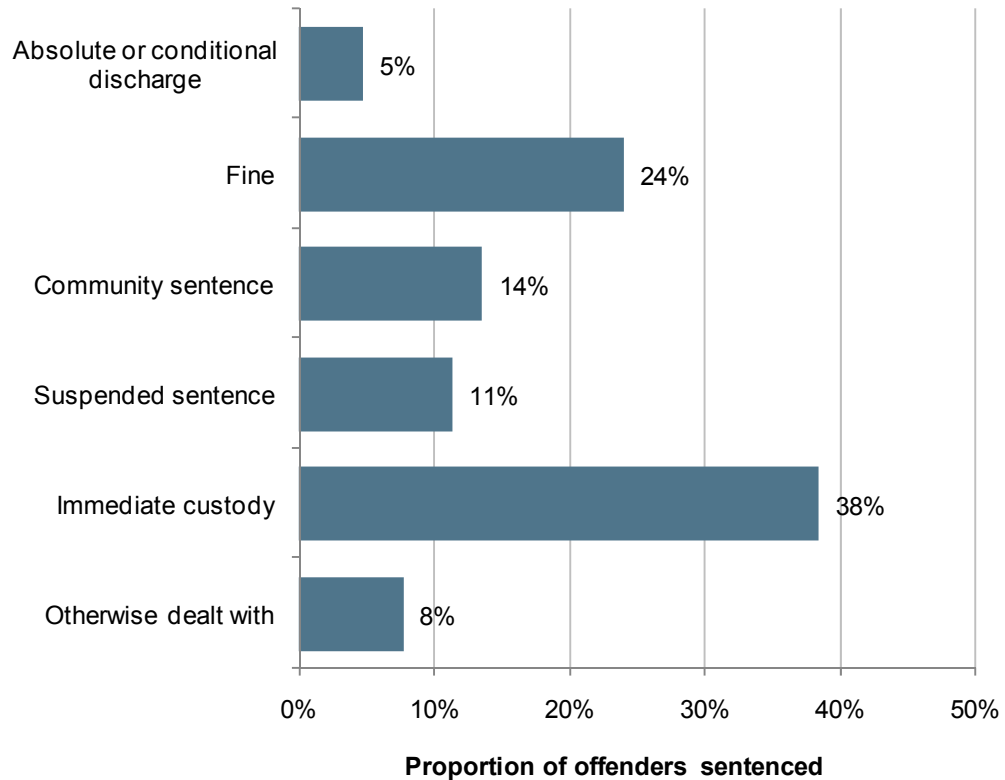
Figure 4: Number of adult offenders sentenced for breach of a Criminal Behaviour Order or an Anti Social Behaviour Order, 2009-2015



Source: Ministry of Justice CPD

4.8 Figure 5 shows the proportion of offenders sentenced for breaching a CBO or an ASBO by sentence outcome. Current sentences for these breaches are generally equally split between custodial and non-custodial. In 2015 approximately 38 per cent of offenders received immediate custody (1,200 offenders) and 11 per cent received a suspended sentence (around 360 offenders). The remainder of sentences were split between fines (24 per cent), community sentences (14 per cent), discharges (five per cent) and 'otherwise dealt with' (eight per cent).

Figure 5: Proportion of adult offenders sentenced for breach of a Criminal Behaviour Order or an Anti Social Behaviour Order, by sentence outcome, 2015

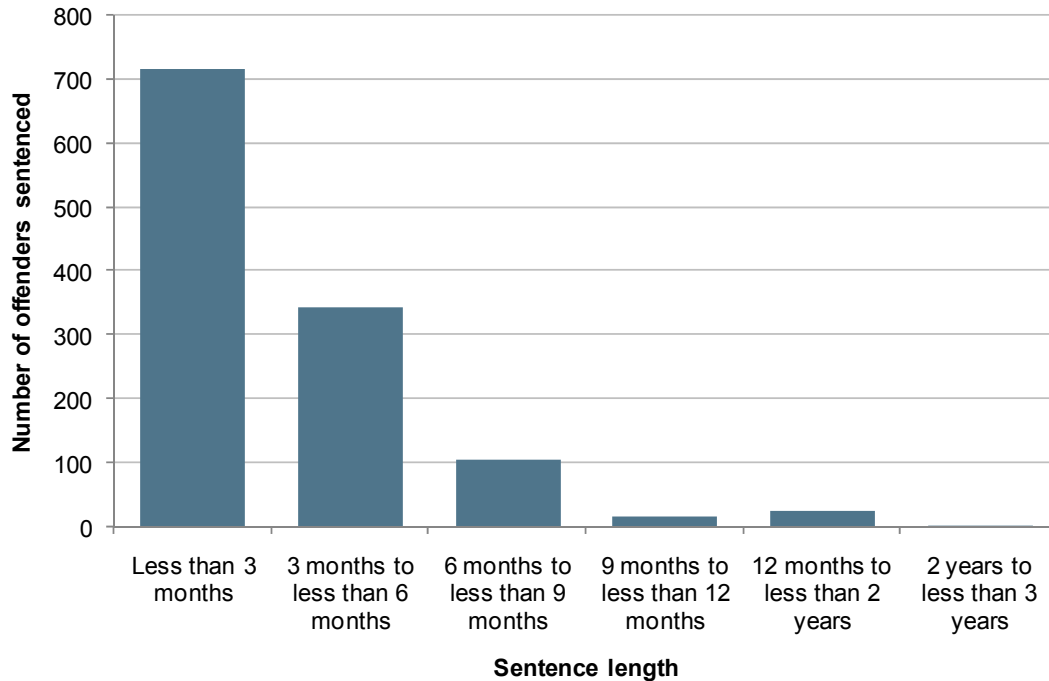


Source: Ministry of Justice CPD

4.9 Figure 6 shows the distribution of custodial sentence lengths in 2015, for those who received an immediate custodial sentence. These are based on pre-guilty plea sentence lengths.¹¹ Eighty-eight per cent of offenders received a sentence of less than six months (approx 1,100 offenders), and only two per cent (30 offenders) received a sentence of one year or over, before any reductions for a guilty plea. The average custodial sentence length pre-guilty plea reduction was four months.

¹¹ 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.

Figure 6: Number of adult offenders sentenced to immediate custody for breach of a Criminal Behaviour Order or an Anti Social Behaviour Order, by sentence length, before any reductions for a guilty plea, 2015



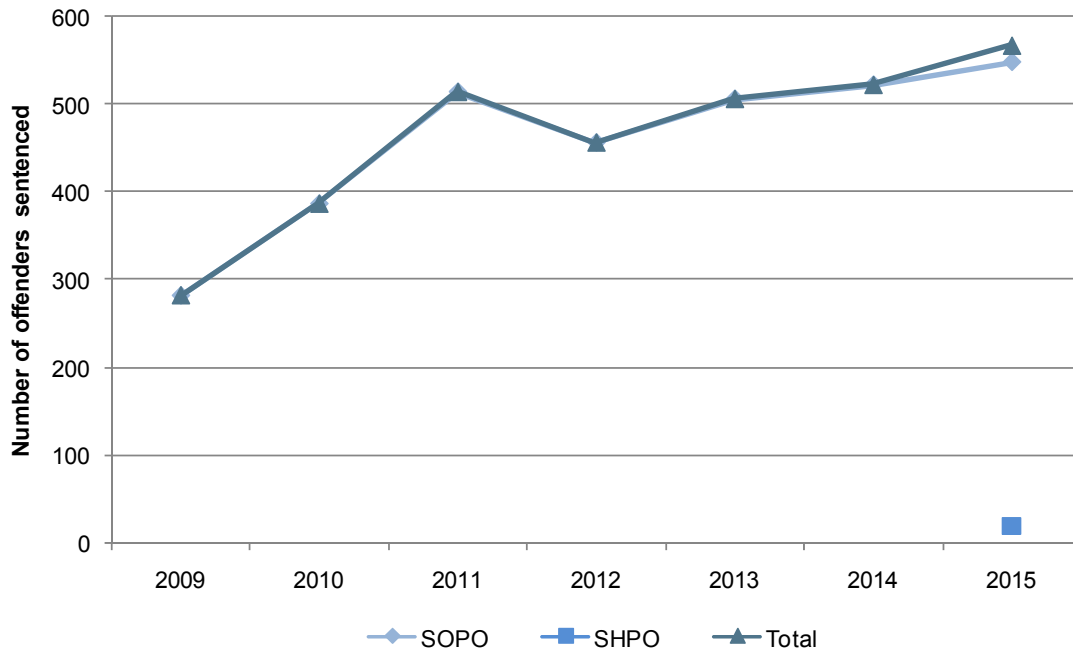
Source: Ministry of Justice CPD data adjusted with the Crown Court Sentencing Survey 2014

Breach of a Sexual Harm Prevention Order (or Sexual Offences Prevention Order)

4.10 Sexual Offences Prevention Orders (SOPOs) were introduced in the Sexual Offences Act 2003. The Anti-social Behaviour, Crime and Policing Act 2014 replaced these with Sexual Harm Prevention Orders (SHPOs).

4.11 There is limited data on breaches of SOPOs prior to 2009, due to data recording issues. Since 2009, with the exception of a downward shift in volumes between 2011 and 2012, the number of adult offenders sentenced for breach of a SOPO has increased, from around 280 in 2009 to approximately 550 in 2015 (see figure 7). In addition, in 2015 around 20 offenders were sentenced for breaching a SHPO. The majority of these cases (79 per cent in 2015) are sentenced in the Crown Court.

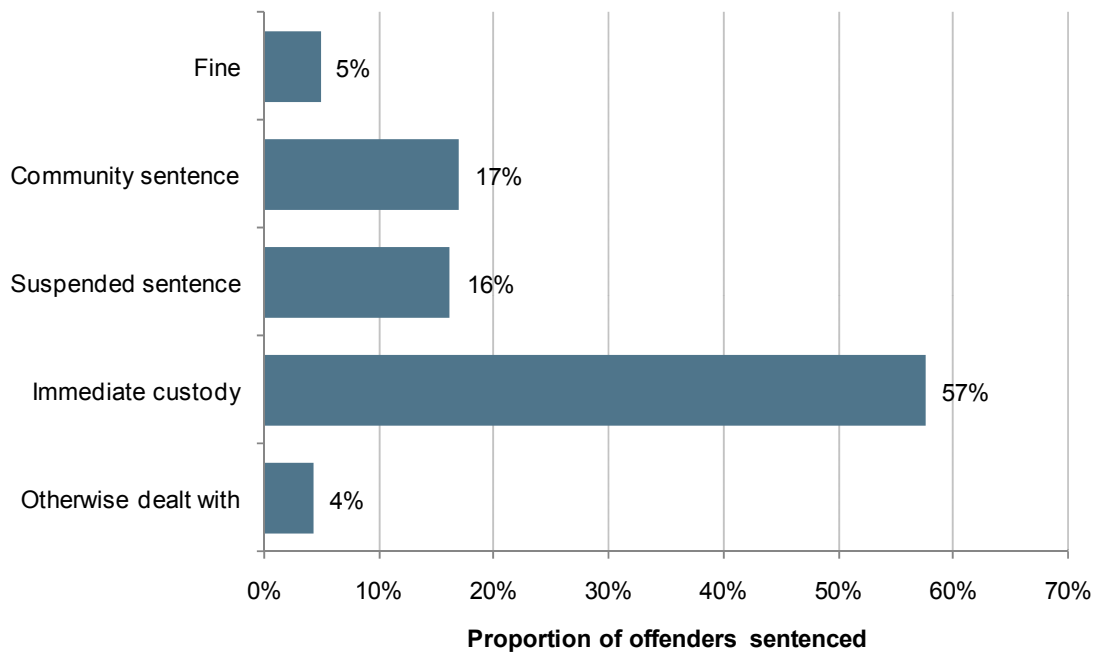
Figure 7: Number of adult offenders sentenced for breach of a Sexual Harm Prevention Order or Sexual Offences Prevention Order, 2009-2015



Source: Ministry of Justice CPD

4.12 Figure 8 shows the proportion of offenders sentenced for breaching a SHPO or SOPO by sentence outcome. In 2015 the most common sentencing outcome was immediate custody (approximately 330 offenders or 57 per cent). The second and third most common outcomes were community sentences (approximately 100 offenders or 17 per cent) and suspended sentences (around 90 offenders or 16 per cent).

Figure 8: Proportion of adult offenders sentenced for breach of a Sexual Harm Prevention Order or Sexual Offences Prevention Order, by sentence outcome, 2015

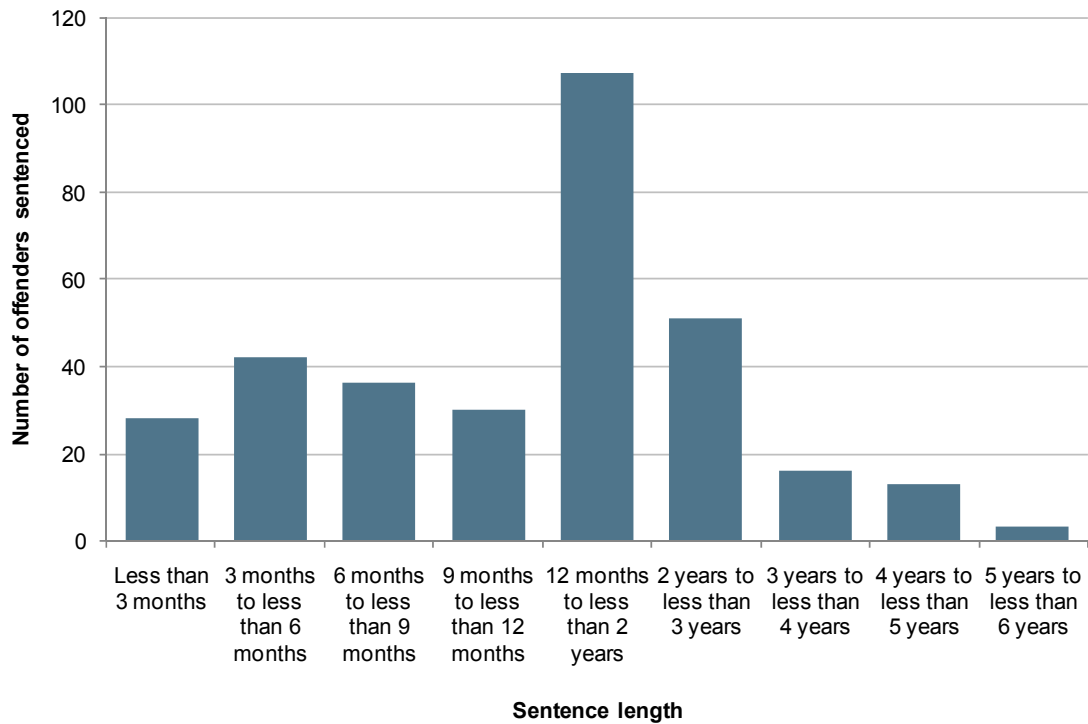


Source: Ministry of Justice CPD

4.13 Figure 9 shows the distribution of custodial sentence lengths in 2015, for those who received an immediate custodial sentence. This is based on the pre-guilty plea sentence length.¹² It suggests that a high proportion of breaches of SOPOs and SHPOs are at the more serious end of the scale, with 58 per cent of offenders (190 cases) receiving a sentence of one year or more. The average custodial sentence length was just over 18 months (prior to any guilty plea reduction).

¹² 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.

Figure 9: Number of adult offenders sentenced to immediate custody for breach of a Sexual Harm Prevention Order or Sexual Offences Prevention Order, by sentence length, before any reductions for a guilty plea, 2015

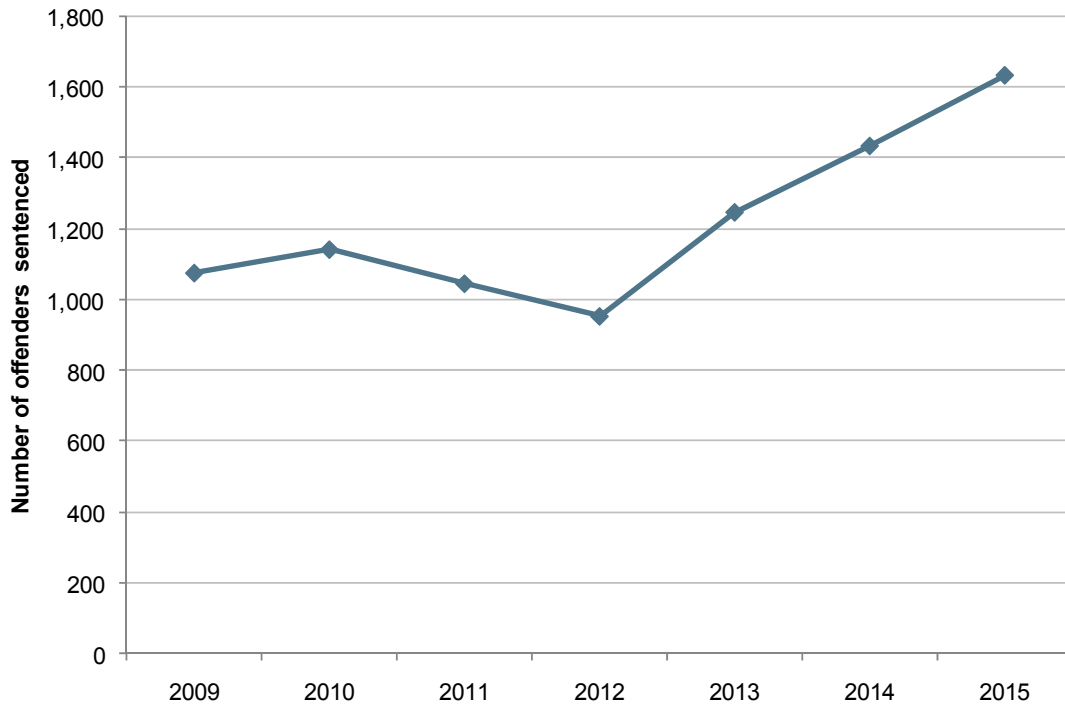


Source: Ministry of Justice CPD data adjusted with the Crown Court Sentencing Survey 2014

Failing to comply with a notification requirement

4.14 The notification requirements for sex offenders were introduced in the Sex Offenders Act 1997. Between 2010 and 2012 the number of offenders sentenced for failing to comply with a notification requirement decreased (see figure 10). However, since 2012 there has been an increase, from approximately 950 in 2012 to 1,600 in 2015. The majority (83 per cent) of these breaches were sentenced in the magistrates’ court.

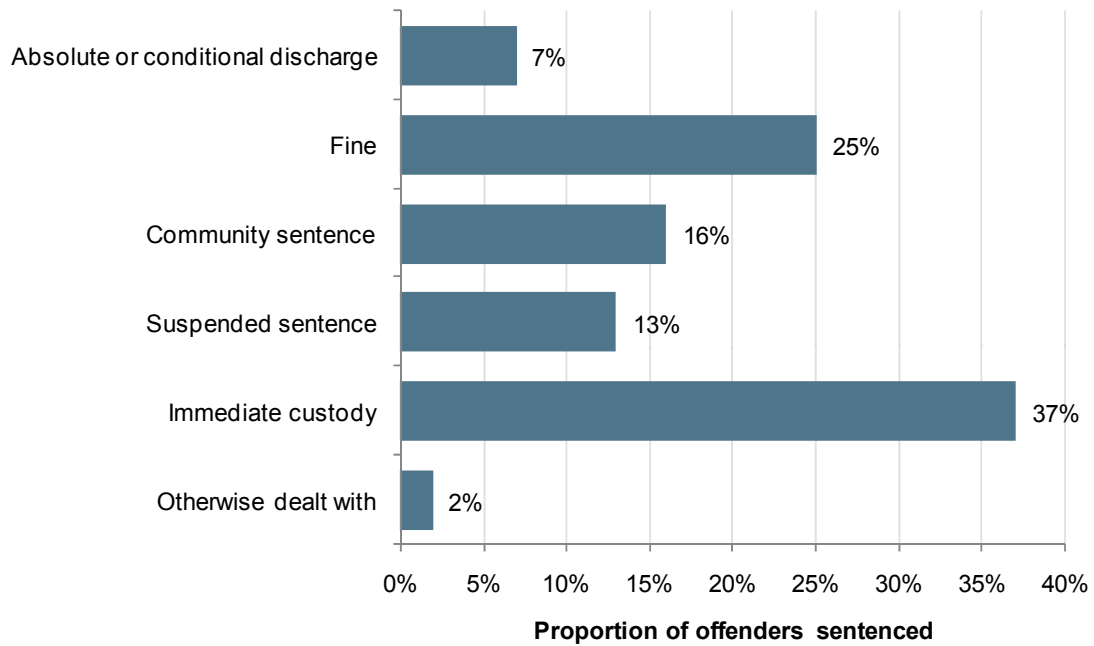
Figure 10: Number of adult offenders sentenced for failing to comply with a notification requirement, 2009-2015



Source: Ministry of Justice CPD

4.15 Figure 11 shows the proportion of offenders sentenced for failing to comply with a notification requirement by sentence outcome. In 2015, immediate custody was the most common sentencing outcome for this offence (37 per cent of offenders sentenced), with a further quarter (25 per cent) of offenders receiving a fine.

Figure 11: Proportion of adult offenders sentenced for failing to comply with a notification requirement, by sentence outcome, 2015

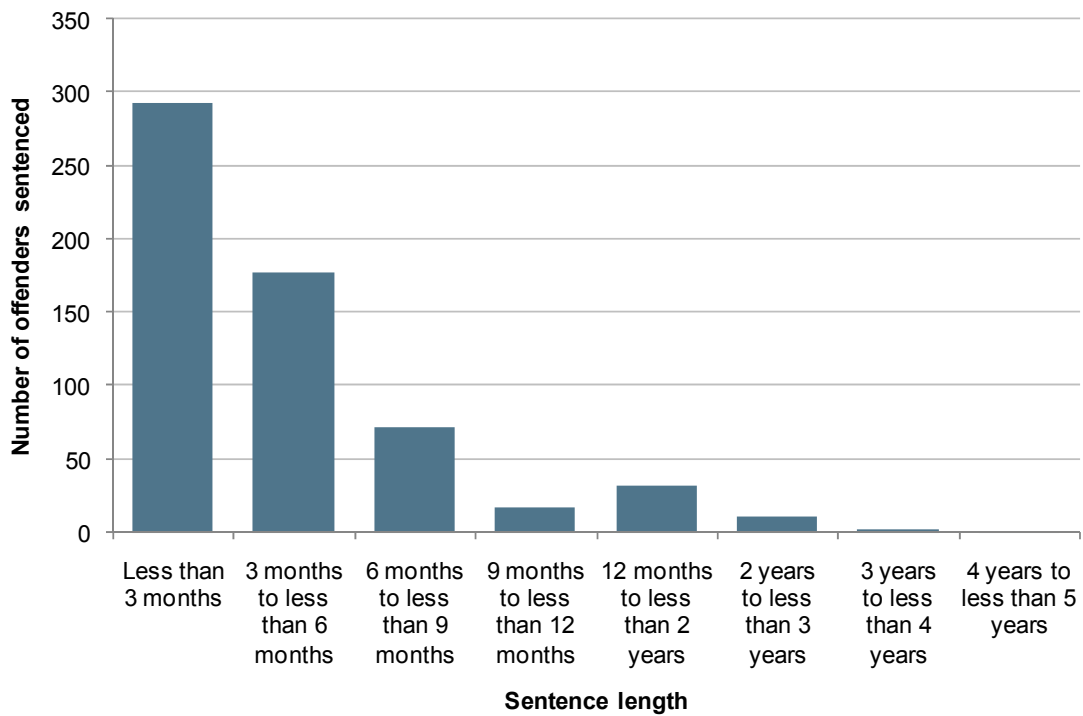


Source: Ministry of Justice CPD

4.16 Figure 12 shows the distribution of custodial sentence lengths in 2015, for those who received an immediate custodial sentence. Seventy-eight per cent of offenders (470 cases) received a sentence of less than six months, and only two per cent (around 10 cases) received a sentence of two years or more, before any reductions for a guilty plea.¹³ The average custodial sentence length was just under five and a half months (prior to any guilty plea reduction).

¹³ 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.

Figure 12: Number of adult offenders sentenced to immediate custody for failing to comply with a notification requirement, by sentence length, before any reductions for a guilty plea, 2015



Source: Ministry of Justice CPD data adjusted with the Crown Court Sentencing Survey 2014

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 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 have been considered. Transcripts of cases and news articles have also been reviewed, although these generally reflect more serious breaches attracting custody.

5.5 In addition, 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, interviews will be undertaken with sentencers as part of the consultation, 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/>.

Breach of a Protective Order

6.1 The existing Sentencing Guideline Council's guideline for breach of a protective order (which includes breach of a restraining order and breach of a non-molestation order) contains five categories reflecting the 'nature of activity'. These categories are based on the number of breaches and the harm caused, but do not take account of the culpability of the offender. The proposed new guideline adopts the Sentencing Council's standard approach. It is based on three levels of harm and three levels of culpability.

6.2 In general, the proposed sentencing ranges have been set with current sentencing practice in mind and therefore it is not anticipated that there will be any

impact on prison and probation resources in the majority of cases. There are three exceptions which may lead to higher sentences for some breaches of a restraining/non-molestation order.

6.3 Firstly, the proposed guideline illustrates the sentence ranges differently to the existing guideline. Whereas the existing guideline presents the sentence in cases of the most serious harm as “more than 12 months”, the draft guideline is more specific with a range of 1 to 4 years. Looking at current sentencing practice it can be seen that some breaches are already being sentenced at the top of the range (over the last five years, there was an average of just over one percent, or 44 cases per year that received a sentence of two years’ custody or more).

6.4 However, the Crown Court Sentencing Survey (CCSS) suggests that around 15 per cent of breaches of protective orders sentenced in the Crown Court fell into category 1 - the ‘most serious’ category.¹⁴ It is not possible to estimate how these cases would be distributed across the three levels of culpability in the new guideline, but on the basis of the CCSS analysis, it is likely that a small number of additional cases would be categorised in the top category than was the case before. Given the limited data available in this area, it is not possible to quantify the exact number that this might apply to and consequently the correctional resources involved. In addition, any costs to correctional resources incurred may be offset by the fact that category C1¹⁵ has a lower starting point and sentence range than the current top harm category and the fact that the existing guideline assesses seriousness by volume of breaches only, which could make it harder to fall into the highest A1 category.

6.5 Secondly, in addition to there being more sentences in the most serious category, another potential impact is that those offenders who have been sentenced to immediate custody of two years or more under the existing guideline may have been given longer sentences under the proposed guideline, as the category range has been extended. However, it is not possible to quantify exactly which sentences may be impacted and how they would be affected, and as there are relatively few sentences in this category it is anticipated that any impact would be minimal.

6.6 Thirdly, under the new guideline, culpability category A (the most serious category) includes flagrant, serious or persistent breaches, whereas the existing guideline just focuses on the number of breaches. As a result, an offender who

¹⁴ The Crown Court Sentencing Survey (CCSS) collected information on the seriousness of the offence, which was categorised as Level 1 – most serious, through to Level 4 – least serious. This proportion is based on the CCSS 2013 and 2014.

¹⁵ This is the category with the highest level of harm but the lowest level of culpability.

breaches an order by resuming a relationship with the protected subject of an order, but doesn't cause any harm because the protected subject is willingly in contact, will be classified as a category A3 breach under the new guideline (high culpability, as it is a deliberate breach, but one which causes low harm). Under the existing guideline this breach would attract a starting point of a medium level community order as it reserves custodial sentences for offences involving violence. Under the new guideline this offence would attract a starting point of 12 weeks' custody. Due to the context of this type of situation and the characteristics of domestic abuse, the Council felt that these types of offences should be treated more severely than they currently are to enhance the efficacy of the restraining order. In addition, it was felt that the sentence levels for this offence should not be lower than the same category for breach of an ASBO/CBO due to the risk that inferences could be drawn regarding the relative seriousness of these offences. This category will also capture deliberate breaches where the breach was flagrant, serious or deliberate and harm may not have been caused but could have been intended.

6.7 This means that some offenders currently receiving a community order could instead receive a short custodial sentence under the new guideline. It is again not possible to estimate the number of breaches which may fall into this category, due to a lack of data. However, a review of transcripts suggests the numbers are not likely to be large.

Breach of a Criminal Behaviour Order (or Anti Social Behaviour Order)

6.8 The existing Sentencing Guideline Council's guideline for breach of an ASBO contains three categories reflecting the 'nature of failure and harm'. These categories are based on the level of harassment, alarm or distress and the harm caused, but do not take account of the culpability of the offender. The proposed new guideline adopts the Sentencing Council's standard approach. It is based on three levels of harm and three levels of culpability.

6.9 In general, the proposed sentencing ranges have been set with current sentencing practice in mind and therefore it is not anticipated that there will be any impact on prison and probation resources in the majority of cases. The exception is for the most serious breach cases, where there has been an extension to the category range, and also at the bottom of the distribution where there may actually be a reduction in sentence severity.

6.10 The proposed guideline includes an extension to the category range for the most serious cases (category A1), up to four years from two years in the existing guideline. Looking at sentencing practice over the last five years, on average around three per cent of custodial sentences were over 12 months in length and just under one per cent (or nine sentences) were two years or over (prior to any reduction for a guilty plea).¹⁶ The CCSS suggests that around 23 per cent of breaches of ASBOs sentenced in the Crown Court fall into category 1 - the 'most serious' category.¹⁷ It is not possible to estimate how these cases might be distributed across the three levels of culpability, but the CCSS data suggests that there may be an increase in the number of cases receiving a sentence of two years or more under the new guideline.

6.11 However, as with protective orders, the new guideline should make it harder for offenders to get into the top box of seriousness. Under the existing guideline offenders would find themselves in the most serious harm category if they caused harassment, alarm or distress or where such harm was intended. Under the proposed new guideline an offender would have to cause very serious physical or psychological harm or distress to an individual in order to get into the most serious harm category (category 1). As a consequence it is anticipated that this will offset any impact due to the extension to the category sentencing range and no further uplift in sentences is expected.

6.12 Again, as with protective orders, another potential impact is that those currently receiving sentences of two years or more would receive longer sentences under the proposed guideline due to the range being expanded from the existing guideline. However, it is not possible to quantify exactly which sentences may be impacted and how they might increase, and as there are relatively few sentences in this category it is anticipated that any impact would be minimal.

6.13 In the existing guideline, only cases where 'no' harm is caused are categorised in the bottom harm category. However, under the proposed new guideline offenders causing 'little or no' harm would be classified in the lowest harm category. This may see some offenders previously classified in the middle harm category (category 2), now being in the lowest harm (category 3) and a corresponding reduction in their sentence.

¹⁶ It is worth noting that over the last five years there has been a reduction in the number of sentences of two years or over.

¹⁷ The Crown Court Sentencing Survey (CCSS) collected information on the seriousness of the offence, which was categorised as Level 1 - most serious through to Level 4 - least serious. This proportion is based on the CCSS 2013 and 2014.

Breach of a Sexual Harm Prevention Order (or Sexual Offences Prevention Order)

6.14 There is no existing guideline available for breach of a Sexual Harm Prevention Order (SHPO) or Sexual Offences Prevention Order (SOPO). Therefore in developing sentence levels and assessing the impact of the new guideline, it has been necessary to look at data on current sentence levels.

6.15 The proposed sentencing ranges in the new guideline have been set in line with current sentencing practice. Looking at sentence levels (figure 9) it can be seen that breaches of these orders are already being sentenced at the top of the range. Over the last five years, on average 26 per cent of sentences were two years or above and four per cent were four years and above (prior to any reduction for a guilty plea). These offences would fall into the highest category in the proposed new guideline (category A1), which has a starting point of three years and a range of two years to four and a half years.

6.16 Unlike the previously discussed breach offences, there is no data on which to base assumptions regarding the number of offences which are likely to fall into the top category of seriousness (A1) in the new guideline. This is because there is no existing guideline for this offence, and therefore no data was collected as part of the CCSS. In the absence of any further information it has been assumed that these offences are already being sentenced at the top of the range to reflect their seriousness, and no further uplift is anticipated.

Failing to comply with a notification requirement

6.17 The existing magistrates' court guideline for failing to comply with a notification requirement focuses solely on culpability. The proposed new guideline adopts the Sentencing Council's standard approach, assessing both culpability and harm. The two guidelines are very different in their approach and consequently it is difficult to compare them.

6.18 The new guideline is based on three levels of culpability and three levels of harm. It is designed to draw a distinction between offences where:

- there are flagrant attempts to avoid detection or a long period of non-compliance, which may be motivated by a desire to be unmonitored and unrestricted to commit further offences; and

- those where there is a deliberate failure to comply with the requirement; for example by an offender who moves house but does not notify the authorities.

6.19 The existing guideline extends to the Crown Court and allows for sentences up to the statutory maximum. Looking at current sentencing practice however, on average there are only around two per cent of cases over the last five years with a sentence of two years or more (pre guilty plea). A review of transcripts of cases has confirmed that current guidance is not considered adequate by sentencers to address offences falling within the top end of seriousness. The new guideline is more prescriptive and as a consequence it is possible that there may be more sentences at the top end of the guideline range. However, it is not possible to assess how current cases would be distributed across the levels of harm and culpability (as there is no existing Crown Court guideline and so no data was collected as part of the CCSS) and therefore how sentence lengths may be impacted.

6.20 The proposed guideline also includes a higher starting point at the lower end of seriousness (category A3 – the lowest level of harm but the highest level of culpability). The starting point for custodial sentences pre guilty plea in the new guideline is 36 weeks. Over the last five years, on average around 75 per cent of sentences pre guilty plea were under six months (prior to reduction for a guilty plea). This suggests that there is likely to be an uplift to sentence lengths. However, again, as the two guidelines are very different it is not possible to estimate how sentences on aggregate may be impacted.

6.21 Overall, it appears that the new guideline may increase sentences for some cases. However, due to lack of data and the differences between the two guidelines it is not possible to quantify the size of the impact.

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. This includes providing case scenarios as part of the consultation exercise which are intended to test whether the guideline has the intended effect and inviting views on the guideline. However, there are limitations on the number of factual scenarios which can be explored, so the risk cannot be fully eliminated.

7.4 The risk is also mitigated by the collection and analysis of sentencing information from courts. By comparing sentence outcomes to those that may result from the new guideline, it is possible to detect and amend problematic areas of the proposed new guideline.

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

7.5 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).

7.6 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 in conjunction with Council members' experience of sentencing.

7.7 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.