

Consultation Stage Resource Assessment

Expanded explanations in sentencing guidelines

Introduction

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

Rationale and objectives

The Council is proposing to embed additional information into offence specific sentencing guidelines to make it easier for users to access relevant information. This will provide sentencers and other court users with useful information relating to commonly used factors in guidelines and also improve transparency for victims, defendants and the wider public. At the same time the Council is proposing changes to wording in some guidelines to improve consistency and clarity across guidelines.

Scope

As stipulated by section 127 of the Coroners and Justice Act 2009, this assessment considers the resource impact of the proposals on the prison service, probation service and youth justice services. Any resource impacts which may fall elsewhere are therefore not included in this assessment.

This resource assessment covers the proposed additional information and changes to all offence specific Sentencing Council guidelines for sentencing adults or organisations. The proposals do not apply to guidelines for sentencing children and young people.

Current sentencing practice

In 2017, 1,177,814 offenders were sentenced in adult criminal courts in England and Wales, and of those, 75,193 were sentenced at the Crown Court. Approximately 85 per cent² of offenders sentenced at all courts were sentenced for a principal offence

¹ Coroners and Justice Act 2009 section 127: www.legislation.gov.uk/ukpga/2009/25/section/127

² This is an approximate figure based on the data available, rounded to the nearest five percent. This includes all Sentencing Council offence specific guidelines, plus guidance issued by the Sentencing Council (e.g. for sentencing drug driving offences), murder (for which sentencing is set out in statute) and magistrates' court

that was covered by an offence specific sentencing guideline that has either already been published/is in force, or is currently in development.

The offence specific guidelines contain a large number of different factors; given the large proportion of offences for which there will be a guideline in place, it is important that the implications of the expanded explanations are explored.

It is generally not possible to identify within the MoJ Court Proceedings Database (one of the main sources of data on sentencing practice) whether these factors have been taken into account in sentencing. Instead, the analysis for this resource assessment has mainly focussed on data collected by the Sentencing Council, from the Crown Court Sentencing Survey (CCSS)³ and other data collections. These have permitted an analysis of the frequency of use of certain factors as well as their impact on sentencing severity (derived from separate assessments of the impact of guidelines on specific offences).⁴

Key assumptions

To estimate the resource effect of changes to guidelines, an assessment is required of how the changes will affect aggregate sentencing behaviour. This assessment is based on the objectives of the changes, and draws upon analytical work undertaken during development of the proposals. However, the assessment is heavily dependent on a number of assumptions, 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 proposals are therefore subject to a large degree of uncertainty.

The resource impact of a new guideline is usually measured in terms of the change in sentencing practice that is expected to occur as a result of it. For this to be possible in this case, a detailed understanding of how the factors covered by the proposals are currently being interpreted in sentencing is required. In developing these proposals an understanding of current practice has been formed by considering Court of Appeal judgments, evidence from Sentencing Council research with sentencers and the experience of Council members. Analysis of data on the factors covered by the proposals has been reviewed and findings from this work have been used to estimate the impact of the proposals on sentencing practice.

It remains difficult to estimate with any precision the impact the proposals may have on prison and probation resources. Even with information on the use of certain factors in sentencing, this does not enable us to measure the extent to which Court of Appeal judgements and best practice are currently already being taken into account

fine and discharge guidance produced by the Sentencing Guidelines Council but which has been adopted by the Sentencing Council (which can be seen here: <https://www.sentencingcouncil.org.uk/offences/magistrates-court/item/offences-appropriate-for-imposition-of-fine-or-discharge/>). Other offences covered by Sentencing Guidelines Council guidelines that have not yet been replaced by SC guidelines have not been included, but these are low volume relative to those that have been covered and so are unlikely to affect the proportion.

³ From 1st October 2010 to 31st March 2015 the Council conducted the Crown Court Sentencing Survey (CCSS) which collected data on sentencing practice in the Crown Court.

⁴ This report considers findings from the guideline assessments on burglary, fraud, money laundering and bribery, robbery and sexual offences. The full guideline assessment reports can be found here: <https://www.sentencingcouncil.org.uk/?s&cat=guideline-assessment>

in sentencing, and whether this differs to the information contained within the proposals. To support the development of the guideline and mitigate the risk of the guideline having an unintended impact, the Council has included a question in the consultation document, asking for consultees' views on the potential impact of the proposals, which will provide more information on which to base the final resource assessment when the definitive version of the changes is published.

Resource impacts

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

The proposals in the consultation will apply at least in part to all offence specific Sentencing Council guidelines for sentencing adults and organisations. As such the proposals have the potential to affect a large proportion of sentences, but as most of the proposals relate to providing expanded explanations of factors at step two of guidelines – after the starting point has been determined – the potential impact is limited.

The expanded explanations are designed to reflect current best practice rather than to alter sentencing practice. In some cases the explanations provide links to or extracts from existing overarching guidelines.

The aim is to improve consistency and transparency in sentencing, but if sentencers are not currently following best practice then it is possible that the expanded explanations could lead to an increase or decrease in individual sentences.

This resource assessment focuses on those areas that have been identified as having the potential to have an impact because the proposal is designed to alter sentencing practice and/or because it will apply to a large number of cases:

- changes to the wording of culpability B factors in three specific guidelines (robbery, theft and fraud) and
- six step 2 (aggravating and mitigating) guideline factors where the provision of further information could impact on their use.

Culpability B in the robbery, theft and fraud guidelines

The Council is consulting on changing one of the factors in category B culpability for theft, robbery and fraud offences. The proposal is to amend the wording of the medium culpability (B) factor in these guidelines which currently is defined by the absence of high or low culpability factors. Typically, the factor is worded as: *'Other cases where characteristics for A or C are not present.'*

Feedback from research with sentencers has been that they find the current wording of the factor unhelpful and in some cases sentencers are reluctant to make a finding based on the lack of factors. The changes to this factor are aimed to give a fuller explanation of what the Council intended the factor to cover and to make the wording more consistent across guidelines (later guidelines use the proposed wording).

The proposal is therefore to change this culpability factor to read:

Other cases that fall between categories A or C because:

- *Factors are present in A and C which balance each other out **and/or***
- *The offender's culpability falls between the factors as described in A and C*

Table 1 shows the proportion of offenders placed into each level of culpability for theft, robbery and fraud offences.⁵ The table shows that for theft from a shop or stall (data collected from magistrates' courts), the majority (59 per cent) of offenders fell into the lowest level of culpability (category C), while a small proportion (10 per cent) fell into the highest category. For street and less sophisticated commercial robbery, and fraud, bribery and money laundering (data collected from the Crown Court), offenders most frequently fell into either the highest or middle culpability categories.

Table 1: Proportion of data collection forms falling into each category of culpability, where the culpability category was known, for specific Theft (2016)⁶, Robbery (2016/17)⁷ and Fraud offences (2014/15)⁸

Offence type	Culpability A	Culpability B	Culpability C
<i>Theft offences (2016)</i>			
Theft from a shop or stall	10%	31%	59%
<i>Robbery (2016/17)</i>			
Street and less sophisticated commercial robbery	40%	42%	18%
<i>Fraud offences (2014/15)</i>			
Fraud, bribery and money laundering	50%	40%	10%

The change in wording for these three guidelines should encourage sentencers to balance culpability A factors with culpability C factors and thereby to place more offenders in culpability B.

For those offences where a high proportion of offenders currently fall into culpability A (robbery and fraud), it is therefore possible that a small number of these offenders could be placed into culpability B instead under the proposals. At the same time,

⁵ Fraud, bribery and money laundering offences. The fraud analysis should be treated with caution, because data on precise culpability levels was not collected on the CCSS forms, and therefore assumptions have been made about which level of culpability the offender fell into, based on the culpability factors ticked on the CCSS form. Due to these data quality issues, the results are approximate and have been rounded to the nearest 10 per cent.

⁶ Between 19 September and 16 December 2016 the Council conducted a survey which collected data on sentencing practice for the offence of theft from a shop or stall in magistrates' courts.

⁷ Between 1 November 2016 and 28 April 2017 the Council conducted a survey which collected data on sentencing practice for robbery offences in the Crown Court.

⁸ Taken from the CCSS data for these offences, 1 October 2014 to 31 March 2015.

there are some key factors causing some offenders definitely to fall into culpability A (for example, for the offence of robbery, the production of a firearm or bladed article places the offender in culpability A), and so the categorisation for many of these individuals is not expected to change. Overall, therefore, there is the potential that the guideline could lead to a small decrease in overall sentencing severity for robbery and fraud offences. However, given the limited data available in this area, it is not possible to estimate the number of offenders who might be affected, or how sentence lengths may be impacted.

In contrast, for theft offences, a large proportion of offenders already fall into either culpability B or C. This is likely to be because more specific factors are provided in culpability B and C in the theft guideline and therefore less reliance is placed on the 'balancing' factor in culpability B. As a result, this change in wording is not anticipated to change the proportion falling into category B for this offence.

Previous convictions

The following statutory aggravating factor appears at step two of all Sentencing Council offence specific guidelines:

Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction

Analysis of data from the CCSS⁹ found that, in 2014, around 49 per cent of offenders sentenced at the Crown Court had at least one previous conviction taken into account: 26 per cent had 1 to 3 previous convictions taken into account, 13 per cent had 4 to 9, and 10 per cent had 10 or more. However, these proportions varied depending on the offence.¹⁰

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.¹¹

Further statistics on previous convictions can be found in the Sentencing Council's Crown Court Sentencing Survey publication at the following link:

<https://www.sentencingcouncil.org.uk/wp-content/uploads/CCSS-Annual-2014.pdf>

The proposed explanation sets out the statutory provisions (section 143 of the Criminal Justice Act 2003) and gives detailed guidance on how previous convictions should be taken into account. Some of these relate to potentially increasing a sentence (e.g. crossing the community or custody threshold when the offence would otherwise not normally warrant this), whilst others relate to potentially decreasing a

⁹ Crown Court Sentencing Survey Annual Publication, January to December 2014 - <https://www.sentencingcouncil.org.uk/wp-content/uploads/CCSS-Annual-2014.pdf>. See page 6 for more information on previous convictions. Data on previous convictions for offenders sentenced for offences causing death were recorded on a different basis and so have not been included in the overall proportions quoted here.

¹⁰ 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. The 2014 CCSS data showed that offenders sentenced for burglary, robbery and driving offences are more likely to have recent and relevant previous convictions that influence their sentence, whereas offenders sentenced for sexual offences are much less likely to have previous convictions that are recent and relevant enough to be taken into account.

¹¹ See page 33 of the CCSS 2014 report, linked above.

sentence or changing a disposal (e.g. where addressing an underlying problem may be more effective with a sentence served in the community). However, the proposed expanded explanation here represents current best practice and is not designed to alter sentencing practice, and therefore the proposals are not expected to change sentencing severity for this factor.

Age and lack of maturity

Consideration of age and/or lack of maturity appears as a mitigating factor at step two of almost all Sentencing Council guidelines.

In magistrates' courts, around 21 per cent of adult offenders sentenced in 2017 were aged 18-25 (inclusive), and around 19 per cent of adult offenders sentenced to immediate custody were in this age group. In the Crown Court the figures were 31 per cent and 30 per cent respectively.¹²

Table 2 shows the frequency of use of the mitigating factors 'Age' and 'Age or lack of maturity' from the CCSS data in 2014. The table shows that age is typically cited as a mitigating factor more frequently than the mitigating factor 'Age or lack of maturity affecting responsibility.'

In general, the proportion of offenders aged 18-24 in the CCSS was higher than the proportion of offenders who had a mitigating factor around age or lack of maturity taken into account in sentencing, as might be expected.¹³

¹² Source: Court Proceedings Database (CPD). These calculations do not include cases where the date of birth of the adult was unknown. Data validations applied to the dataset mean that if there is an apparent anomaly in a defendant's age, records may automatically be assigned a default age of 25 for an adult, meaning that this age is overcounted.

¹³ The age band 18-24 was taken for this analysis, because this breakdown is readily available from the CCSS data.

Table 2: Frequency of use of factors around age and lack of maturity in sentencing, CCSS 2014

Offence type	Frequency of use of factor in the CCSS	Proportion of offenders in the CCSS aged 18-24
<i>Mitigating factor on the CCSS form: Age</i>		
Arson and Criminal Damage	22%	31%
Offences Causing Death	28%	27%
Driving offences	26%	40%
Other offences	20%	26%
Robbery and Assault with intent to Rob	30%	50%
Theft offences	21%	18%
<i>Mitigating factor on the CCSS form: Age/lack of maturity affecting responsibility</i>		
Assault and Public Order	7%	36%
Burglary offences	6%	33%
Drug offences	8%	32%
Fraud, Bribery and Money Laundering offences ¹⁴	8%	13%
Indecent Photographs of Children ¹⁵	14%	11%
Sexual offences ¹⁶	15%	20%

¹⁴ The figure for fraud, bribery and money laundering offences covers offenders sentenced between 1 October 2014 and 31 December 2014, as the Sentencing Council's Fraud, Bribery and Money Laundering guideline came into force on 1 October 2014 and so the CCSS form was changed to reflect the new guideline. Prior to 1 October 2014, these offences were captured on the Theft offences form (for which the full title was 'Theft, dishonesty and fraud offences').

¹⁵ For offences related to indecent photographs of children, the proportion of offenders with the factor 'age/lack of maturity affecting responsibility' cited is greater than the proportion of offenders aged 18-24. There are several possible reasons for this: the proportion of 18 to 24-year-olds does not include those aged 25, who technically also fall under the new expanded explanation, and the proportion may also not include all of those who are considered to have a lack of maturity affecting responsibility. It also does not include older offenders, for whom this factor may be relevant.

¹⁶ This covers sexual offences sentenced between 1 April 2014 and 31 December 2014. The period from 1 January 2014 to 31 March 2014 is not included, because in April 2014 the Sentencing Council's Sexual Offences guideline came into force, and the CCSS form was changed to reflect the new guideline. The period before the guideline came into force is therefore not comparable to the newer data, and has not been included in this analysis for this table, or the subsequent tables in the main part of this report.

Looking at analysis undertaken as part of previous guideline assessments, it was found that for most offences, as would be expected, mitigating factors around age were generally associated with a decrease in sentencing severity. This analysis is summarised in Table 1 in the Annex.

The expanded explanation being proposed draws on recent case law¹⁷ and neurological and psychological research to provide brief but comprehensive guidance on the particular considerations that may be relevant to the sentencing of young adults.

The statistics set out earlier show that age and lack of maturity is already being taken into account as a factor in sentencing, and where it has been possible to assess, is associated with a statistically significant decrease in sentencing. As noted above the expanded explanation is based on case law and therefore it can be assumed that much of the guidance is already being considered by courts. However, two areas have been identified where there is the potential for the proposals to lead to further decreases in sentencing.

Firstly, the expanded explanation clarifies that this mitigating factor will typically apply to offenders aged 18 to 25. It is possible that at present sentencers are not always considering the relevance of this factor for offenders towards the top of this age range. Therefore there could be an increase in the use of this mitigating factor in these cases.

Secondly, for those offences where it was found that the presence of the factor did not appear to have a significant impact on sentencing severity, there is the potential that the detailed guidance in the expanded explanation may lead to a change in the way that this factor is applied, and result in a decrease in sentencing severity in some cases. However, given the limited data available in this area, it is not possible to estimate the number of offenders who might be affected, or how sentence lengths may be impacted.

The proposed expanded explanation refers to 'young adults (typically aged 18-25)' but it is likely that in some cases the mitigating factors 'Age'¹⁸ and 'Age or lack of maturity' have in the past been taken into account for older offenders.

There has been recent case law on the sentencing of elderly and/or physically disabled offenders¹⁹. Many guidelines contain the factor 'Serious medical conditions requiring urgent, intensive or long-term treatment' which may apply to elderly offenders and the proposed expanded explanations include detailed guidance which reflects the recent case law for such cases. It is therefore not anticipated that the expanded explanation for 'Age or lack of maturity' will have any impact on the sentencing of older offenders.

¹⁷ R v Clarke [2018] EWCA Crim 185

¹⁸ The factor 'Age' does not appear in any Sentencing Council guidelines

¹⁹ For example, [R v Clarke](#); [R v Cooper \[2017\] 1 WLR 3851](#), [\[2017\] 2 Cr App R \(S\) 18](#).

Location and timing

The factor “location and timing of the offence” is included at step 2 in all offence specific guidelines.

Table 3 shows the frequency of use of guideline factors related to this factor in the 2014 CCSS data and 2016/17 Robbery data collection. Not all CCSS forms included these factors, and therefore the table only includes statistics on offences for which the factors were included on the CCSS forms.

The table suggests that the factors ‘Location’ and ‘Timing’ are taken into account frequently in sentencing.²⁰

Table 3: Frequency of use of factors around location and timing in sentencing, CCSS 2014 and Robbery data collection 2016/17

Offence type	Proportion of forms with a factor around location ticked	Proportion of forms with a factor around timing ticked
<i>Factors on the CCSS form: Location and Timing</i>		
Assault and public order	42%	25%
<i>Factors on the CCSS form: Location of the offence and Timing of the offence</i>		
Sexual offences	20%	10%
<i>Factors on the robbery data collection form: Location and Timing</i>		
Robbery	40%	34%

The analysis for the relevant guideline assessments found that for the offences considered, guideline factors around location and timing did not appear to have a statistically significant impact on sentencing severity. This analysis is summarised in Table 2 of the Annex.

The proposed expanded explanations provide guidance on the applicability of these factors and caution against applying them unless they indicate increased harm or culpability not already taken into account. They set out a number of instances where these factors may make an offence more serious; for example if the offence was committed in a place in which there is a particular need for discipline or safety such as a prison, court, school or hospital.

As it has been shown that the factors ‘Location’ and ‘Timing’ are currently used frequently in sentencing but do not have a significant impact on average sentencing severity, it is possible that the expanded explanations may reduce the use of these

²⁰ The factor “Committed at night” (related to the timing of the offence) was included for Burglary, and this was ticked on around 28 per cent of forms. The specific factor of ‘Location of premises’ in the Drug Offences guideline was not a frequently used factor – it was ticked on around 1 per cent of forms in 2014 (although this factor should only be relevant for the relatively low volume offence of ‘permitting premises to be used’).

factors in sentencing, by focusing on a narrower range of circumstances where they are applicable. However, for the expected smaller proportion of cases where these factors would be applicable under the proposals, for example where the offence was committed in a prison, court, school or hospital, it is possible that their presence in a case may have a significant impact on sentences. Overall these expanded explanations are not expected to have an impact on average sentencing severity, because it is expected that sentences for offences committed in these circumstances are already aggravated to take this into account, although it has not been possible to test this assumption because it is not possible to identify such cases from the available data.

Offender under the influence of drugs or alcohol

The Council's intention in providing an expanded explanation for this factor is to make it clear firstly, that the factor is only relevant where the intoxication is voluntary and has contributed to the offending (which could reduce the use of the factor to aggravate), and secondly, that the factor is applicable even where the offender has acted out of character as a result of being intoxicated (which could increase the use of the factor to aggravate).

Table 4 shows the frequency of use of this factor from the CCSS data in 2014. The table shows that it is typically cited fairly frequently in sentencing, most frequently for Arson and Criminal Damage, Driving, Robbery and Assault and Public Order offences. The factor is not frequently cited for Theft offences, Sexual offences and Other offences.

Table 4: Frequency of use of the factor 'Offender was under the influence of alcohol/drugs' in sentencing, CCSS 2014

Offence type	Frequency of use of factor in the CCSS
Arson and Criminal Damage	27%
Driving offences	26%
Other offences ^{21, 22}	6%
Robbery and Assault with intent to Rob	26%
Theft offences	4%
Assault and Public Order	23%
Burglary offences	16%

²¹ The factor on the CCSS form was 'Use of drugs, alcohol or another substance to facilitate the offence.'

²² 'Other offences' covers a wide range of offences, including possession of offensive weapons, breach of a protective order, perverting the course of justice, possession/distribution of prohibited weapons or ammunition and other offences.

Sexual offences	8%
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The previous guideline assessments have mainly covered offences where the use of this factor was low, and so for these offences, detailed analysis on the impact of this factor has not been carried out. However, as this factor was cited more frequently for Robbery offences, the Robbery guideline assessment included some analysis on this factor’s impact on sentencing. For the offence of street or less sophisticated commercial robbery, the factor ‘Offender under influence of alcohol/drugs’ did not appear to have a statistically significant impact on average sentence lengths.²³

Overall, it is not anticipated that providing an expanded explanation for this factor will have an impact on average sentences – this is largely because the explanation does not introduce any new considerations, rather it reflects best practice.

However, if it is the case that in some circumstances best practice is not currently being followed then it is possible that the explanation could cause a change to some sentences; given the full explanation provided for this factor, this could be in either direction (either to increase or decrease sentences). Again, it has not been possible to estimate how sentencing severity might be affected by any change, given the limited data about how this factor is currently being applied (but from the limited evidence available – for robbery offences – it seems that the application of this factor may not have a statistically significant impact on sentence lengths).

Victim vulnerability

Tables 5 and 6 show the frequency of use of guideline factors around victim vulnerability in the 2014 CCSS data. Not all CCSS forms included these specific factors, and therefore the table only includes statistics on offences for which factors around ‘Victim is particularly vulnerable’ and targeting of vulnerable victims were included on the CCSS forms.²⁴

The tables suggest that factors around victim vulnerability are taken into account fairly frequently in sentencing, especially for the offence of robbery where around half of the cases in the CCSS had the factor ‘Targeting of vulnerable victim(s)’ taken into account in sentencing.

²³ It should be noted that as robbery offences predominantly attract custodial sentences, only the impact on average custodial sentence lengths are examined. However, for other offences, there may be impacts on, for example, the shift from a non-custodial to custodial sentence.

²⁴ In addition, on some of the CCSS forms the factors around vulnerability were only applicable to certain offences on the form, for example, the factor ‘Specific targeting of vulnerable victim/child under 13 years’ in the sexual offences CCSS form was only applicable to offences where the victim was under 13 years. Therefore, the tables do not include proportions on the number of times these factors were used in sentencing, because they only apply to a subset of the total offences included on the form.

Table 5: Frequency of use of the factors 'Victim is particularly vulnerable', CCSS 2014

Offence type	Frequency of use of factor in the CCSS
Arson and Criminal Damage	7%
Offences Causing Death	21%
Other offences	11%
Theft offences	8%
Assault and Public Order (harm factor)	13%
Sexual offences (harm factor 'Victim is particularly vulnerable due to personal circumstances')	18%
Fraud offences (harm factor) ²⁵	3%

Table 6: Frequency of use of factors around the targeting of vulnerable victims, CCSS 2014

Offence type	Frequency of use of factor in the CCSS
<i>Targeting of vulnerable victim(s)</i>	
Assault and Public Order	7%
Robbery and Assault with intent to Rob	46%
Theft	11%
<i>Culpability factor: Specific targeting of vulnerable victim²⁵</i>	
Fraud	6%

²⁵ The factors related to targeting vulnerable victims and the victim being particularly vulnerable only appear in some of the guidelines within the Fraud, Bribery and Money Laundering guideline, and so the low proportion stated here may be related to the factor only being relevant for some of the cases. In the CCSS data, it was not possible accurately to determine which guideline was used to sentence offenders so all offences were grouped together for the analysis. Also, the factor on the CCSS form for these offences was 'Specific targeting of vulnerable victim'. However, in the guideline the wording is slightly different: in the 'Fraud' guideline it is worded as 'Deliberately targeting victim on basis of vulnerability' and in the 'Possessing, making or supplying articles for use in fraud' guideline it is worded as 'Articles deliberately designed to target victims on basis of vulnerability'. There were no cases of bribery or corporate offenders included in the analysis.

As part of the assessments for the robbery, sexual offences and fraud guidelines, analysis of the impact of factors related to victim vulnerability was carried out. For robbery and most sexual offences included in the analysis, this analysis found that factors around victim vulnerability did not appear to have a statistically significant impact on sentencing severity. However, for rape offences the factor 'Victim is particularly vulnerable' and for fraud offences, the factors 'Specific targeting of vulnerable victim'²⁵ and 'Victim particularly vulnerable' were associated with statistically significant increases to sentencing. This analysis is summarised in Tables 3 and 4 of the Annex.

One reason for these factors not always having a statistically significant impact on the sentence could be that victim vulnerability is intrinsic to many of these offences and so is already taken into account by the sentencer through the application of other factors at step 1. The proposed explanation includes a reminder not to double count factors and so it is not anticipated that this position will change.

The proposed expanded explanation for this factor draws on case law to provide balanced guidance on where vulnerability may be relevant. The explanation makes it clear that it is for the court in each case to weigh up the impact of victim vulnerability on the sentence.

Therefore, it is not anticipated that the proposed explanation will have any impact on prison and probation resources.

Risks

In attempting to estimate the likely resource impacts of some of the expanded explanations being proposed, there are two main risks to consider:

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

An important input into developing sentencing guidelines or guidance is an assessment of current sentencing practice. The Council uses this assessment as a basis to consider whether current sentencing approaches 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 or guidance comes into effect.

This risk is mitigated by information that is gathered by the Council as part of the development and consultation phase. As outlined above, however, the data to support the proposed expanded explanations is limited in some areas. The Council has therefore included a question in the consultation document, asking for consultees' views on the potential impact of the proposals, in order to provide more information on which to base the final resource assessment when the definitive version of the changes is published.

Risk 2: Sentencers do not interpret or apply the factors as intended

If sentencers do not interpret the guideline as intended, this could cause a change in the average severity of sentencing, with associated resource effects.

The Council takes a number of precautions when issuing a new guideline or guidance to try to ensure that sentencers interpret it as intended. The wording of the guideline factors has been developed by drawing on an understanding of current practice which has been formed by considering Court of Appeal judgments, evidence from Sentencing Council research with sentencers and the experience of Council members.

Annex: Impact of guideline factors on sentencing

This Annex contains summary tables of the impact of various guideline factors on sentencing. These summaries are based on findings from the guideline assessments that have been conducted.

Due to the large number of factors in each guideline, not all guideline factors are included in each assessment. Therefore, the analysis is only available for factors which were present in a certain proportion of cases (typically where a factor was present in more than five per cent of cases).

Table 1: Impact of the mitigating factor ‘Age or lack of maturity affecting responsibility’ on sentencing, for offences where this was considered as part of the guideline assessment

Offence type	Impact of the factor
<i>Burglary offences (2012-2014)</i>	
Domestic Burglary	Associated with a statistically significant decrease to sentencing severity
<i>Sexual offences (2014/15)</i>	
Rape	Associated with a statistically significant decrease to sentencing severity
Rape of a child under 13	Associated with a statistically significant decrease to sentencing severity
Sexual Assault	Did not appear to have a statistically significant impact on sentencing severity
Sexual Assault of a child under 13	Did not appear to have a statistically significant impact on sentencing severity
Sexual Activity with a child	Did not appear to have a statistically significant impact on sentencing severity
<i>Fraud, bribery and money laundering offences (2014/15)</i>	
All offences grouped together for analysis	Associated with a statistically significant decrease in the probability of receiving a more severe sentence
<i>Robbery offences (2016/17, mitigating factor ‘Age or lack of maturity’)</i>	
Street or Less Sophisticated Commercial Robbery	Associated with a statistically significant decrease to sentence lengths

Table 2: Impact of the factors around location and timing on sentencing, for offences where this was considered as part of the guideline assessment

Offence type	Impact of the factor
<i>Burglary offences (2012-2014, factor 'Offence committed at night')</i>	
Domestic Burglary	The factor 'Offence committed at night' did not appear to have a statistically significant impact on sentencing severity
Non-Domestic Burglary	The factor 'Offence committed at night' did not appear to have a statistically significant impact on sentencing severity
<i>Sexual offences (2014/15)</i>	
Rape	The factors 'Location' and 'Timing' did not appear to have a statistically significant impact on sentencing severity
Rape of a child under 13	The factors 'Location' and 'Timing' did not appear to have a statistically significant impact on sentencing severity
Sexual Assault	The factors 'Location' and 'Timing' did not appear to have a statistically significant impact on sentencing severity
Sexual Assault of a child under 13	The factors 'Location' and 'Timing' did not appear to have a statistically significant impact on sentencing severity
Sexual Activity with a child	The factor 'Location' did not appear to have a statistically significant impact on sentencing severity. There were not enough records where 'Timing' was a factor in sentencing, to determine whether this factor had an impact on sentencing severity for this offence.
<i>Robbery (2016/17)</i>	
Street or Less Sophisticated Commercial Robbery	The factors 'Location' and 'Timing' did not appear to have a statistically significant impact on sentence lengths

Table 3: Impact of the factors ‘Victim particularly vulnerable’ and ‘Victim particularly vulnerable due to personal circumstances’, for offences where this was considered as part of the guideline assessment

Offence type	Impact of the factor
<i>Sexual offences (2014/15) – guideline harm factor ‘Victim particularly vulnerable due to personal circumstances’</i>	
Rape	Associated with a statistically significant increase to sentencing severity
Rape of a child under 13	Did not appear to have a statistically significant impact on sentencing severity
Sexual Assault	Did not appear to have a statistically significant impact on sentencing severity
Sexual Assault of a child under 13	Did not appear to have a statistically significant impact on sentencing severity
Sexual Activity with a child	Did not appear to have a statistically significant impact on sentencing severity
<i>Fraud, bribery and money laundering offences (2014/15, guideline harm factor ‘Victim particularly vulnerable’)</i>	
All offences grouped together for analysis	Associated with a statistically significant increase in the probability of receiving a more severe sentence

Table 4: Impact of factors around targeting of particular victims, for offences where this was considered as part of the guideline assessment

Offence type	Impact of the factor
<i>Robbery offences (2016/17) – guideline aggravating factor ‘Targeting of vulnerable victim’</i>	
Street or Less Sophisticated Commercial Robbery	Did not appear to have a statistically significant impact on sentence lengths
<i>Sexual offences (2014/15) – guideline aggravating factor ‘Specific targeting of vulnerable victim/child under 13 years’</i>	
Rape of a child under 13	Did not appear to have a statistically significant impact on sentencing severity
Sexual Assault of a child under 13	Did not appear to have a statistically significant impact on sentencing severity
Sexual Activity with a child	Did not appear to have a statistically significant impact on sentencing severity
<i>Fraud, bribery and money laundering offences (2014/15) – guideline factor ‘Deliberately targeting victim on basis of vulnerability’ (worded on CCSS form as ‘Specific targeting of vulnerable victim’)</i>	
All offences grouped together for analysis	Associated with a statistically significant increase in the probability of receiving a more severe sentence