

## FINAL RESOURCE ASSESSMENT: ENVIRONMENTAL OFFENCES

### 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 Currently, there is limited guidance for sentencers on sentencing environmental offences in the Magistrates' Court Sentencing Guidelines. The Sentencing Council has received a number of requests to produce a guideline for fly-tipping and other environmental offences from a range of parties with an interest in this area, such as the National Fly Tipping Prevention Group and the Environment Agency. The requests arose from particular concerns that the levels of fines currently being given in the courts for environmental offences are not high enough and so neither reflect the seriousness of the offences committed nor have sufficient deterrent effect on offenders. Concerns were also raised about the inconsistency in fine levels for similar offences, committed by similar offenders, across the country.

2.2 The Council agrees that there is a need for improved guidance in this area, to address inconsistencies in sentencing, including the levels of fines being given.

2.3 The Council believes that introducing guidelines will not only meet the demands of courts but will also benefit victims and offenders in setting out a clear process for the sentencing of environmental offences which can be followed by those who may not have any legal training or background.

2.4 In producing a new guideline for environmental offences, The Council seeks to promote a consistent approach to sentencing for environmental offences.

2.5 The Council adopted a principled approach to formulating the starting points and ranges in the new guideline based on the seriousness of the offence, informed by the sentencing data available to it. In its review of current sentencing practice, the Council determined that the levels of some fines were too low and did not reflect the seriousness of the offences committed.

2.6 The Council considers that the starting points and ranges in the new guideline are as fair, consistent and proportionate as possible within each offence and across all offences covered by the new guideline and will reinforce a consistent approach to the sentencing of these offences, setting out a much clearer position on the setting of fines for corporate offenders. By improving consistency in sentencing, the Council expects the guideline to increase the current levels of fines received for some offences by some offenders. Specifically, it is anticipated that companies and some individuals that commit more serious offences will receive higher fines as a result of

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

the guideline. For individuals and organisations committing less serious offences, it is expected that current fine levels will be maintained.

### **3 CHANGES TO THE GUIDELINE FOLLOWING THE CONSULTATION PERIOD**

3.1 A number of refinements have been made to the draft guideline that was consulted on. These changes have been made in response to information gathered during the consultation and have been made to ensure the guideline is as effective as possible in meeting its objectives, which are unchanged.

3.2 These changes are discussed in detail in the consultation response paper, which accompanies this document. In summary, the following key changes have been made:

- Changes have been made to the turnover values used to categorise different sizes of organisations and the number of categories used. The Council has reviewed the overall proportionality of penalties within these re-defined categories to ensure that they reflect the revised turnover values and meet the overall objectives of the guideline.
- Following feedback in the consultation regarding the appropriateness of having a custodial starting point for certain categories of offences, the definitive guideline introduces a new Band F fine band instead of a 12 week custodial starting point for some offence categories.
- A number of other changes have been made to the drafting of the guideline to improve the clarity and usability of the guideline.

### **4 SCOPE**

4.1 As stipulated by section 127 of the Coroners and Justice Act 2009, this assessment considers the resource impact of the guideline on the prison service, probation service and youth justice services.

4.2 The majority of sentences for environmental offences are fines. As a result, this resource assessment goes beyond the statutory remit to consider the effects of the proposed new guideline on the level of financial penalties.

### **5 SUPPORTING EVIDENCE**

5.1 To ensure that the objectives of the guideline are realised, and to better understand the potential resource impacts of the guideline, the Council has carried out analytical and research work in support of the guidelines.

5.2 Research has been conducted with sentencers at magistrates' courts and at the Crown Court. This work involved working through sentencing case studies with judges to understand how the new guideline may be used by judges, and how it may change their sentencing practice. Research interviews were conducted in two phases: one before the consultation period, examining different options available at the time, and one during the consultation period to explore issues associated with the consultation version of the guideline. The Council has also undertaken statistical analysis of current sentencing practice to help inform the sentencing ranges in the new guideline. A report outlining the research work, and a bulletin providing detailed statistics for the offences covered by the guideline can be found at the following URL: <http://sentencingcouncil.judiciary.gov.uk/consultations-current.htm>.

5.3 Official sentencing statistics have been supplemented with a review of recent cases in the magistrates' courts and the Crown Court, which has enabled the Council to identify the harm and culpability factors present in offences, and where the offender is a company, its wealth. The sources of this data have been Court of Appeal transcripts, transcripts of cases provided by the Environment Agency and UKELA, and media reports. However, this information is not available for all cases, and we are aware that availability of data tends to be biased in favour of cases with certain features. For instance, data is more likely to be available for high severity cases or cases that attract media interest for other reasons.

5.4 The Council has also taken account of information received as part of the consultation process in the final guideline – more details of the responses received is contained in the consultation response paper.

5.5 Despite the evidence which has been collected, understanding current sentencing practice for environmental offences has been more challenging than for many of the other sentencing guidelines produced by the Council. There are several reasons for this.

5.6 First, environmental offences are relatively low volume. This means that few sentencers have experience of sentencing significant numbers of cases in relation to other offences and a result, it is difficult to build up a representative picture of how cases are currently dealt with.

5.7 Second, the majority of environmental offences are sentenced in the magistrates' court. It is difficult to get access to information on the circumstances of these cases because sentencing transcripts cannot be obtained for cases in the magistrates' court. One option would be to visit courts to observe such cases, but this would be too resource intensive due to their infrequency (on average, there were around two cases per magistrates' court in 2012).

5.8 Finally, data on financial penalties is difficult to interpret because it doesn't directly correspond to sentencing ranges set out in sentencing guidelines. Data is available on the absolute amount of financial penalties, after any adjustments for the means of the defendant; but the sentencing guideline specifies penalties that apply before any adjustments have been made for means or guilty plea discounts.

5.9 In many cases, this means that the primary driver of the fine amount recorded in the data is the means of the defendant. This is particularly true for individuals (as opposed to organisations) - in these cases many financial penalties are calculated as a percentage of the defendant's income, meaning that unless income data is available, it is difficult to understand the intent of the penalty.

5.10 The relative paucity of data means that there is a risk that the proposed new sentencing guideline will have unanticipated effects on fine levels. This is detailed further in section 8 of this document.

## **6 KEY ASSUMPTIONS**

6.1 To estimate the resource effect of a new guideline, an assessment is required of how it will affect aggregate sentencing behaviour. This assessment is founded on the objectives of the new guideline, and backed up by the research and analytical work which has been undertaken in support of the guideline. 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.

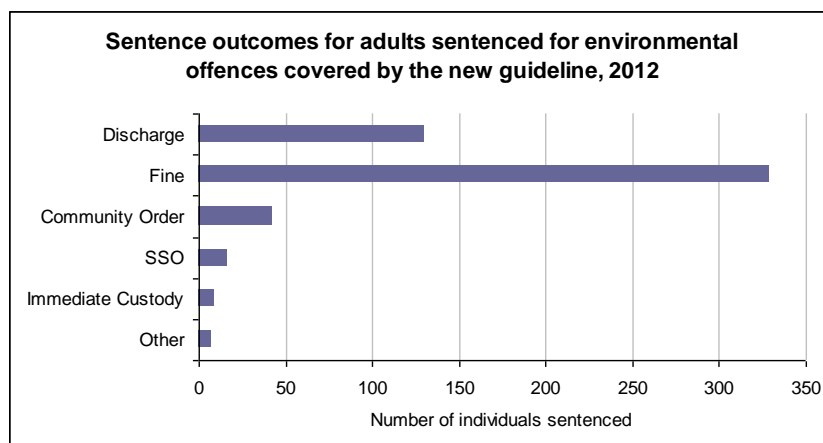
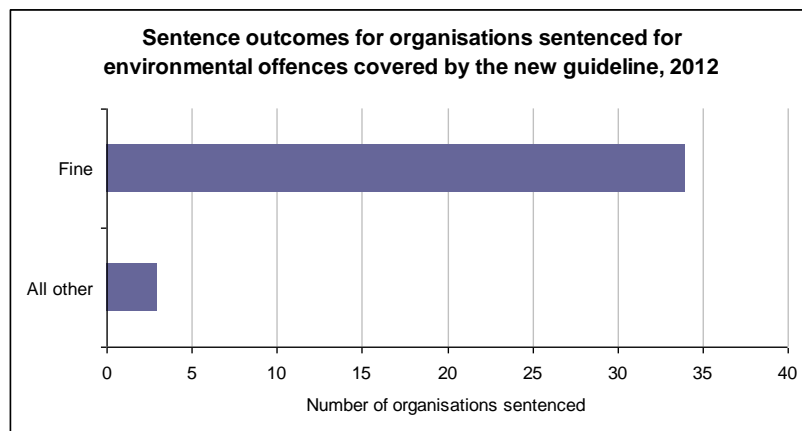
6.2 Historical data on changes in sentencing practice following the publication of guidelines can help inform these assumptions, but since each guideline is different, there is no strong evidence base on which to ground assumptions about behavioural change. The assumptions thus have to be based on careful 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. Research work with sentencers helps with this process, but due to the huge range of possible factual scenarios and offending behaviour, not all sentencing scenarios can be explored with judges.

6.3 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.

## 7 SENTENCING FOR ENVIRONMENTAL OFFENCES

7.1 Detailed sentencing statistics for environmental offences have been published on the Sentencing Council website at the following link: <http://sentencingcouncil.judiciary.gov.uk/consultations-current.htm>. This section presents simple statistics to give an indication of the volume of environmental offences and the sentences which are received for these offences.

7.2 The following charts show the mix of disposal types which are used for the environmental offences covered under the proposed new guideline. They show that fines are the most frequently used disposal type. In 2012, they accounted for 92% of sentences for organisations and 62% of sentences for individuals.



7.3 These charts also show that the environmental offences covered by the guideline are relatively low volume offences.

## **8 RESOURCE IMPACTS OF GUIDELINE**

8.1 The guideline aims to improve consistency of sentencing but not to cause changes in the use of disposal types. Guideline sentencing ranges have been set with this in mind, and the Council does not anticipate that the guideline will have an effect on custodial sentence lengths, or numbers of community orders or custodial sentences. There are therefore unlikely to be significant impacts on prison or probation resources.

### **Fine levels for organisations**

8.2 The Council anticipates there may be an impact on fine levels for some cases of environmental offending involving organisations. Specifically, in its review of recent cases, the Council judged that fine levels in some relatively severe cases involving corporations were too low. As a result, the fine levels in the proposed new guidelines were set at levels above some examples of current sentencing practice. The Council is therefore expecting increases in fine levels each year for some cases where the offender is an organisation.

8.3 The Council has not attempted to quantify the possible increase in fine levels for a number of reasons. First, the number of fines given to organisations for the offences covered by the proposed the new guideline is low – for instance, there were only 37 in 2012. Second, amongst the cases reviewed by Council, there was a mix of sentences that Council felt were appropriate and ones which Council judged were too low, so not all sentences for organisations would be affected by the changes the Council is proposing. Due to the lack of comprehensive data on the circumstances of corporate offending, it is difficult to assess the proportion of cases which would be affected and how much fine levels would change. Therefore, it is felt that quantitative estimates would be subject to such a high degree of uncertainty that they would not add value

### **Fine levels for individuals**

8.4 Council has set fine levels for individuals at levels consistent with its understanding of current sentencing practice for most offenders. It is likely that fine levels for the more serious types of offences have been raised.

8.5 For reasons discussed in section 4, the data that exists on financial penalties for individuals is not very useful in setting guideline sentencing levels, which are specified as percentages of the offender's income. This makes it difficult to be certain about the effects of the guideline on fine levels. Instead, the Council has taken a more principled approach to fine levels.

8.6 It is thought likely that the proposed new guideline raises fine levels because it explicitly recommends the use of band D, E and F fines for some higher severity offences. These bands are the highest levels of fines recommended for use by magistrates in the Magistrates' Court Sentencing Guidelines, and are understood to be used infrequently at present. It therefore seems likely that fine amounts among more serious environmental offences at magistrates' courts may rise.

8.7 Comprehensive data is not available on severity levels of environmental offences committed by individuals. As a result it is difficult to predict how many offenders may be affected, and how much their fine amounts may change. No

attempt has therefore been made to quantify changes in fine levels amongst individuals.

## **9 RISKS**

9.1 Three risks have been identified:

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

9.2 An important input into developing sentencing guidelines is an assessment of current sentencing practice. Council uses this assessment as a basis to consider whether current sentencing levels are appropriate or whether any changes should be made. Where Council is content with current sentencing levels, guideline sentencing ranges reflect the best data which is available on sentencing practice.

9.3 As discussed in section 4 of this document, the data which is available on sentencing for environmental offences makes an assessment of current sentencing practice challenging. As a result, there is a risk that sentencing ranges do not accurately reflect current sentencing practice. This could result in unintentional changes in fine levels, or the mix of disposal types used for environmental offences.

9.4 This risk is mitigated by information that has been gathered by the Council's programme of research interviews, in which sentencers reviewed the proposed guideline and commented on whether it represents a departure from current sentencing practice. However, due to limitations on the number of research interviews that could be conducted, and the number of factual scenarios which could be explored, a risk remains.

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

9.5 This could cause a change in the average severity of sentencing, with associated resource effects.

9.6 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. The Council has several expert advisors from various disciplines who scrutinise the guidelines. Prior to the guidelines' release, research is conducted with judges to assess the likely affect of the guidelines on sentencing practice, and following their release supporting materials are made available on the Sentencing Council website to aid the interpretation of the guidelines. Finally, consultees can 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.

9.7 The Council also uses data from the Ministry of Justice and the Crown Court Sentencing Survey to monitor the effects of its guidelines to ensure any divergence from its aims is identified as quickly as possible. In addition, the Council is planning to work with the Environment Agency to monitor individual sentences following the release of the guideline to ensure the guideline is used as intended.

9.8 Nevertheless, the possibility of unintended consequences of the new guidelines cannot be ruled out.

**Risk 3: Fine levels for other similar offences are affected**

9.9 The proposed new guideline applies to a relatively small number of cases each year. The guideline's applicability does not extend beyond the offences specifically mentioned in the guideline.

9.10 There is a small risk that sentencers may apply the starting points and ranges set out in the proposed new guideline to offences which are not covered by the guideline. This could affect the level of fines for these other offences.