

## Final Resource Assessment: Theft 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 Theft is a high volume offence - in the 12 months ending December 2014, 116,158 offenders were sentenced for theft offences in courts in England and Wales. This figure represents 9.6% of all offenders sentenced in 2014.<sup>2</sup> Theft covers a wide range of offences such as stealing goods from shops and the illegal abstraction of electricity. Existing guidance for theft offences is currently contained within the Sentencing Guidelines Council (SGC) guideline; Theft and Burglary in a Building Other than a Dwelling, published in 2008, and within the Magistrates Court Sentencing Guidelines (MCSG). For some common theft offences, such as theft of a motor vehicle, there is currently no guideline. The SGC theft guideline also contains out of date burglary guidance, as a new Burglary Offences Definitive Guideline came into force in 2012.

2.2 The theft definitive guideline will provide guidance for sentencers for the most common theft offences within one self-contained document. Offences included within the new guideline for which previously there was no guideline include: theft from a motor vehicle, theft of a motor vehicle and theft of a pedal cycle.

2.3 The new theft guideline aims to ensure consistency of approach to sentencing theft offences, in terms of ensuring that the sentences are proportionate to the offence committed and in relation to other offences. The Council also aims to provide transparency for victims of theft and the public regarding the sentencing process. The approach taken is not intended to change the average severity of sentencing.

### 3 SCOPE

3.1 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 SUPPORTING EVIDENCE

4.1 To ensure that the objectives of the guideline are realised, and to understand better the potential resource impacts of the guideline, the Council has carried out analytical and research work in support of the guideline. Two strands of research have helped Council to understand current sentencing practice and the most important determinants of sentences for theft offences, and to ensure that sentencing levels in the new guidelines are set at an appropriate level.

4.2 Firstly, research was conducted with sentencers at magistrates' courts and at the Crown Court, during both the consultation and post consultation phases. This work involved

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

<sup>2</sup> <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2014> (Table Q1.3). To note, burglary is included within the total theft offences.

working through sentencing case studies with sentencers to understand how the new guideline may change their sentencing practice and taking views on the content of the proposals. An exercise to sentence a sample of sentencing remarks from Crown Court cases was also undertaken using the draft guideline.

4.3 Secondly, the Council undertook statistical analysis of current sentencing practice to help inform the sentencing ranges in the guideline. Official sentencing statistics have been supplemented with a review of recent cases in magistrates' courts and the Crown Court, which has enabled the Council to identify the harm and culpability factors present in offences. Detailed statistics of sentencing for the offences covered by the guideline can be found at the following URL: <http://www.sentencingcouncil.org.uk/publications/item/theft-offences-analysis-and-research-bulletin/>.

## **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 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.

5.2 Historical data on changes in sentencing practice 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.

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.

## **6 SENTENCING FOR THEFT OFFENCES**

6.1 Detailed sentencing statistics for theft offences have been published on the Sentencing Council website at the following link: <http://www.sentencingcouncil.org.uk/publications/item/theft-offences-analysis-and-research-bulletin/>.<sup>3</sup> This section presents simple statistics to give an indication of the volume of theft offences and the sentences which are received for these offences.

6.2 Theft is a very high volume offence. Table 1 presents data on the number of adult offenders who were sentenced for the various theft offences covered by the proposed new guideline in 2014.<sup>4</sup>

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<sup>3</sup> The statistical bulletin relates to 2012, in line with the draft resource assessment. The figures in this paper have been updated to 2014.

<sup>4</sup> These figures differ from the total number of theft offences quoted in paragraph 1, which is taken from official Ministry of Justice statistics, for two reasons. Firstly, Table 1 relates to adult offenders only. Secondly, there are some offences in the overall figure which are not covered by the draft guideline, such as vehicle taking without consent and burglary.

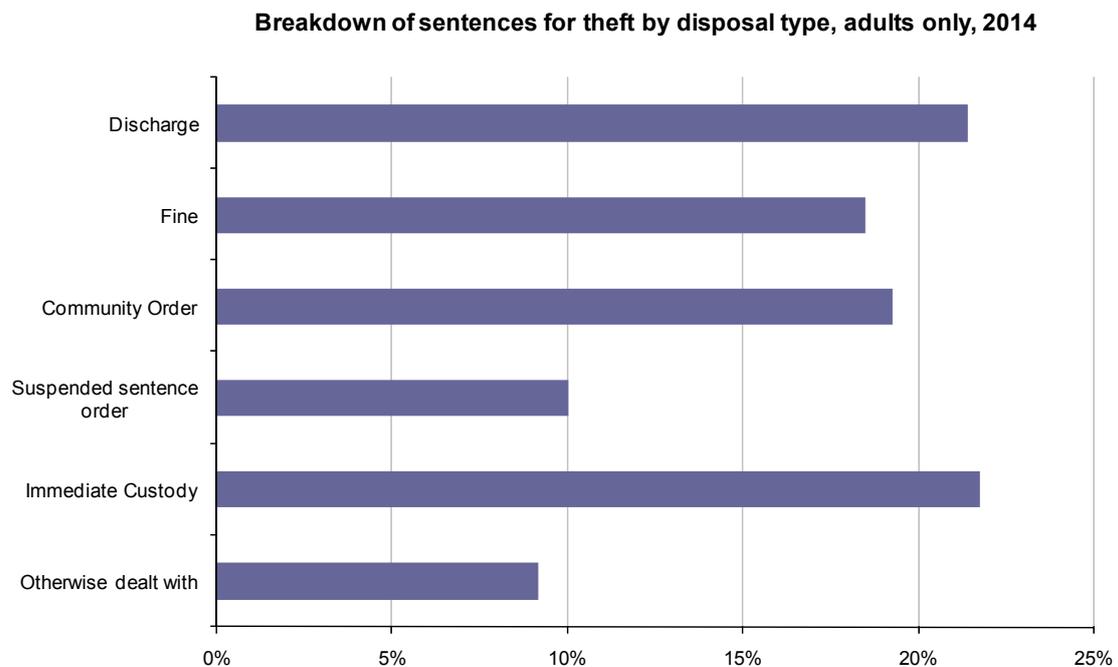
**Table 1**

	Number of offenders sentenced
Abstracting Electricity	360
General Theft	13,200
Going equipped for theft or burglary	1,500
Making off without payment	1,600
Handling stolen goods	5,200
Theft from a shop or stall (shoplifting)	69,400
<b>Total</b>	<b>91,300</b>

Source: Ministry of Justice.<sup>5</sup> Rounded to nearest 100 when more than 1,000 offenders were sentenced, and to the nearest 10 when less than 1,000 offenders were sentenced.

6.3 The majority (68%) of sentences for theft offences do not involve a custodial sentence (either immediate custody or a suspended sentence order). Figure 1 shows the percentage breakdown of sentences by disposal type.

**Figure 1**



Source: Ministry of Justice<sup>5</sup>

<sup>5</sup> For details of data collection and methodology please see <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2014>

The figures given in the table 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.

6.4 The relatively high number of offenders sentenced for theft is resource intensive for both the prison and probation services.

## **7 RESOURCE IMPACT OF GUIDELINE**

7.1 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. As a result, no significant impact on prison, probation or youth justice resources is anticipated.

## **8 RISKS**

8.1 Two main risks have been identified:

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

8.2 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.

8.3 However, developing an accurate picture of sentencing practice across the country can be challenging. For the theft guideline, an area of particular difficulty has been gaining accurate information on the value of goods stolen in thefts. This is important because the sentencing levels at Step 1 of the new guidelines are linked to the value of the thefts. Inaccuracies in the Council's assessment of how penalties link to the value of thefts could therefore cause unintended changes in sentencing practice when the new guideline comes into effect.

8.4 This risk is mitigated by information that was 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. A small exercise of observational research was also undertaken in the magistrates' court to collect this type of information. However, there are always practical limitations on the number of research interviews that can be conducted, and the number of factual scenarios which can be explored, so the risk cannot be fully eliminated.

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

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

8.6 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 effect 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.

8.7 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. The impact on sentencing will also be monitored as part of a forthcoming evaluation of the theft guideline which will collect information from magistrates' courts and the Crown Court.

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