

Final Stage Resource Assessment: Summary offences in the Magistrates' Court Sentencing Guidelines (MCSG)

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 The magistrates' court sentencing guidelines were last updated fully in 2008 and cover both summary and either-way offences. The 2008 version comprises both guidelines published by the Council's predecessor, the Sentencing Guidelines Council ('legacy guidelines') and also Sentencing Council guidelines. Both groups of guidelines contain guidance on the full range of sentencing options available, including, where applicable, when community and custodial sentences should be considered.

2.2 The approach of the 'legacy guidelines' is now out of date as a result of the introduction of the Sentencing Council guidelines, which all use a standard approach, regardless of the type of offence being considered. The Sentencing Council is therefore revising the existing guidelines, starting initially with the existing summary offences.

2.3 The Council's objective is for all magistrates' court sentencing guidelines to follow a single, consistent format, with a view to promoting consistency of approach. Although the new guidelines take account of changes to legislation and other relevant factors, they are not intended to

¹ Coroners and Justice Act 2009 section 127.

result in significant changes to sentencing levels or existing sentencing practice.

2.4 In the first stage of revision of the MCSG, the following 27 offences are covered:

- **Alcohol sale offences** - *Licensing Act 2003, s.141; s.146; s.147*
- **Animal cruelty** - *Animal Welfare Act 2006, s.4, s.8 and s.9*
- **Careless driving (drive without due care and attention)** - *Road Traffic Act 1988, s.3*
- **Communication network offences** - *Communications Act 2003, s.127(1)*
- **Communication network offences** - *Communications Act 2003, s.127(2)*
- **Drive whilst disqualified** - *Road Traffic Act 1988, s.103*
- **Drugs – fail to attend/ remain for initial assessment** - *Drugs Act 2005, s.12*
- **Drugs – fail/ refuse to provide a sample** - *Police and Criminal Evidence Act 1984, s.63B*
- **Drunk and disorderly in a public place** - *Criminal Justice Act 1967, s.91*
- **Excess alcohol (drive/ attempt to drive)** - *Road Traffic Act 1988, s.5(1)(a)*
- **Excess alcohol (in charge)** - *Road Traffic Act 1988, s.5(1)(b)*
- **Fail to provide specimen for analysis (drive/ attempt to drive)** - *Road Traffic Act 1988, s.7(6)*
- **Fail to provide specimen for analysis (in charge)** - *Road Traffic Act 1988, s.7(6)*
- **Fail to stop/ report road accident** - *Road Traffic Act 1988, s.170(4)*
- **Football related offences** - *Sporting Events (Control of Alcohol etc.) Act 1985, s.2(1) and s.2(2), Football Offences Act 1991, s.2, s.3 and s.4 and Criminal Justice and Public Order Act 1994, s.166*
- **No insurance** - *Road Traffic Act 1988, s.143*

- **Obstruct/ resist a police constable in execution of duty** - *Police Act 1996, s.89(2)*
- **Railway fare evasion** - *Regulation of Railways Act 1889, s.5(1) and s.5(3)*
- **School non-attendance** - *Education Act 1996, s.444(1) and s.444(1A)*
- **Sexual activity in a public lavatory** - *Sexual Offences Act 2003, s.71*
- **Speeding** - *Road Traffic Regulation Act 1984, s.89(10)*
- **Taxi touting/ soliciting for hire** - *Criminal Justice and Public Order Act 1994, s.167*
- **TV licence payment evasion** - *Communications Act 2003, s.363*
- **Unfit through drink or drugs (drive/ attempt to drive)** - *Road Traffic Act 1988, s.4(1)*
- **Unfit through drink or drugs (in charge)** - *Road Traffic Act 1988, s.4(2)*
- **Vehicle interference** - *Criminal Attempts Act 1981, s.9*
- **Vehicle taking, without consent** - *Theft Act 1968, s.12.*

3 SCOPE

3.1 This resource assessment has firstly considered the summary offences in the MCSG where custody is included in the sentencing range; it is these offences where any changes to the guideline will have the greatest impact on correctional resources. It has also considered two high volume offences with a statutory maximum penalty of a fine, where small changes have been made to sentencing levels/ ranges following consultation and where fines are the most common disposals.² The offences considered are:

- **Vehicle interference** - *Criminal Attempts Act 1981, s.9*
- **Vehicle taking, without consent** - *Theft Act 1968, s.12*
- **Drink driving: Excess alcohol (drive/ attempt to drive)** - *Road Traffic Act 1988, s.5(1)(a)*

² The Sentencing Council has a statutory duty to assess the resource impact of its guidelines on prison places, probation and youth justice services, and as such, offences are only assessed if custodial or community sentences are imposed. However, for offences where fines are the principal disposal, these offences are also included.

- **Drive whilst disqualified** - *Road Traffic Act 1988, s.103*
- **Animal cruelty** - *Animal Welfare Act 2006, s.4 (unnecessary suffering), s.8 (fighting etc), s.9 (breach of duty of person responsible for animal to ensure welfare)*
- **Communication network offences** - *Communications Act 2003, s.127(1) and s.127(2): s.127(1) Sending grossly offensive, indecent, obscene or menacing messages; s.127(2) Sending false message/persistent use of communications network for purpose of causing annoyance, inconvenience or needless anxiety*
- **TV licence payment evasion** - *Communications Act 2003, s.363*
- **Speeding** - *Road Traffic Regulation Act 1984, s.89(10)*

4 KEY ASSUMPTIONS

4.1 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 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.

4.2 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.

4.3 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

guidelines. Any future changes in sentencing practice which are unrelated to the publication of the new guidelines are therefore not included in the estimates.

5 RESOURCE IMPACTS

5.1 For all of the guidelines, there is a small risk that the new format could cause sentencers to apply the guidelines differently, but as their layout has been designed to be clear and easy to follow, any changes in sentencing practice are likely to be due to an increased understanding of how to interpret the guidelines. This would increase consistency and therefore there is not expected to be any impact on resources over and above any highlighted below.

5.2 As outlined in 3.1, the resource assessment has considered the seven summary offences in the MCSG where custody is included in the sentencing range. For five of these offences, there will be no changes to guideline starting points and ranges; the new guidelines merely reflect a conversion from previous guidelines to the Sentencing Council model. The five offences are: Vehicle interference; Vehicle taking without consent; Excess alcohol (drive/ attempt to drive and in charge), Drive whilst Disqualified and Animal Cruelty. As the guidelines are not intended to change sentencing practice, it is not anticipated that there will be any impact on correctional resources.

5.3 However, for two Communication Network offences - there will be a change in the focus of the guidelines.

5.4 For a further two offences – TV licence payment evasion and Speeding, where the statutory maximum penalty is a fine, there will be a change to the sentencing starting points and ranges.

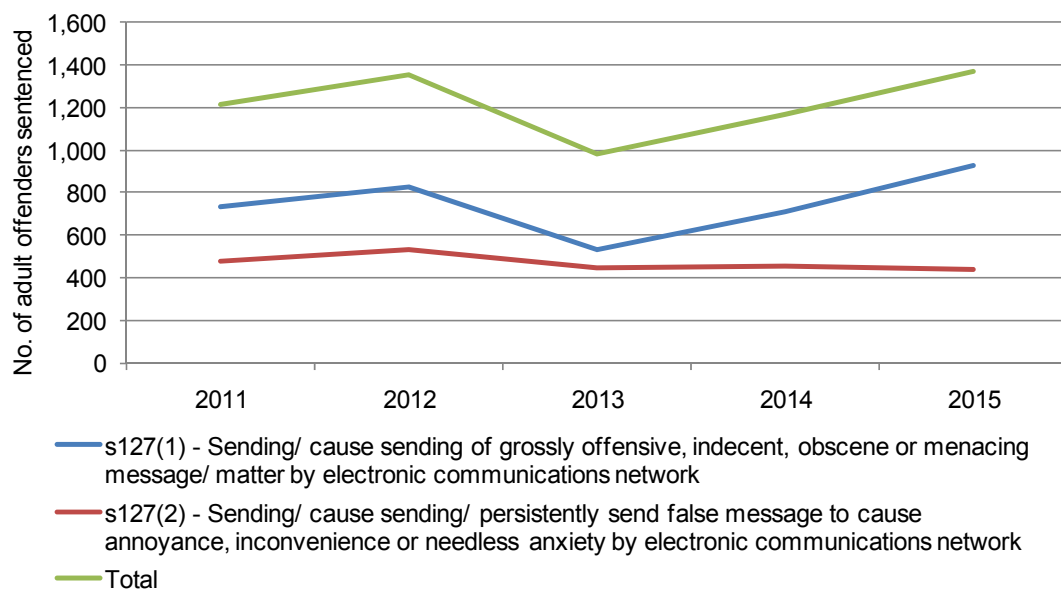
5.5 The following section provides more detail on this, starting with current sentencing for these offences, before discussing whether the guideline changes may lead to any resource impacts.

Sentencing for Communication Network offences

5.6 Figure 1 shows the number of adult offenders sentenced for Communication Network offences (section 127(1) and section 127(2)) between 2011 and 2015. The volume of offences is relatively low, around 1,200 a year on average. Ninety-eight per cent of these offences are sentenced in the magistrates' court.

5.7 In 2015, around 170 offenders sentenced for Communication Network offences were given an immediate custodial sentence, which was 12 per cent of the total sentenced. The ACSL for section 127(1) offences was nine weeks, with a sentence range from one to 26 weeks, and the ACSL for section 127(2) offences was 10 weeks, with a sentence range from three to 26 weeks.

Figure 1: Number of adult offenders sentenced for specified Communication Network offences, all courts, 2011 to 2015



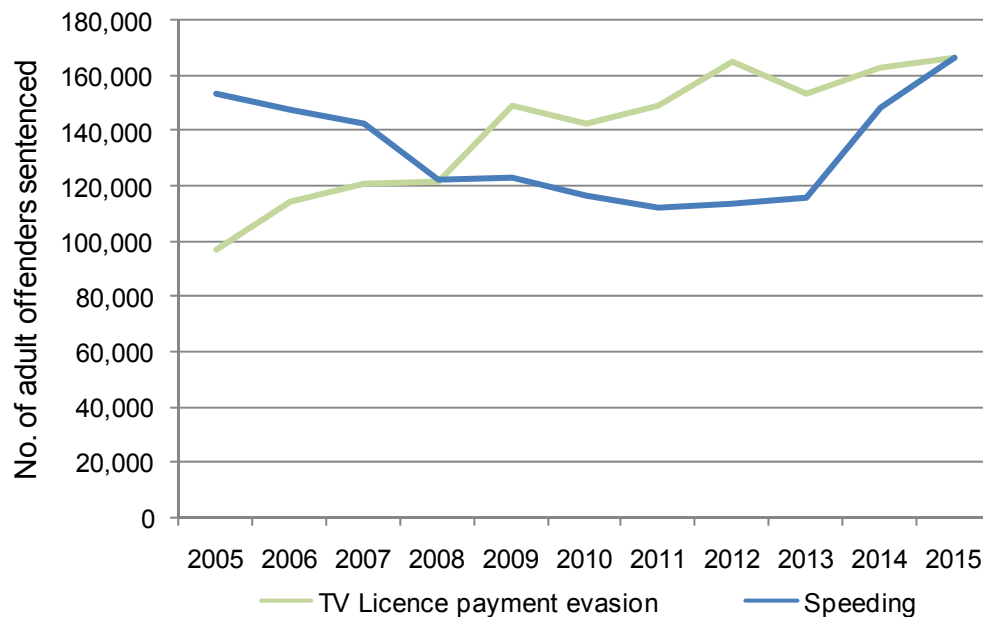
Sentencing for TV Licence payment evasion and Speeding offences³

5.8 TV Licence payment evasion and speeding are high volume offences. Figure 3 shows the number of adult offenders sentenced for these offences in

³ The figures for this section are taken from the Ministry of Justice [Criminal justice statistics outcomes by offence data tool](#) (MS Excel Spreadsheet, 10.9MB)

all courts, since 2005. In 2015, there were around 167,000 offenders sentenced for each offence. The majority of sentences for both offences were fines (99.7 per cent for both offences in 2015). The average fine value for TV licence payment evasion was £173, while the average fine value for speeding was £188.

Figure 2: Number of adult offenders sentenced for TV Licence payment evasion and Speeding offences, all courts, 2005 to 2015



Resource issues

Communication Network offences

5.9 The new guideline for communication network offences retains the same starting points and ranges for category 2 and 3 offences as under the existing guidelines, but changes them for category 1 offences (the highest level of offending). The changes bring the starting points and ranges for both offences into line, in one combined guideline: for section 127(1) offences the starting point and top end of the range are increased by three weeks to nine weeks and 15 weeks, respectively; for section 127(2) offences the starting point and top of the range are reduced by three weeks to nine weeks and 15 weeks, respectively. The Council is of the view that all category 1 offences covered under the SGC guideline are of the same seriousness, regardless of

which section of the Act they are charged under, which should be reflected through the same starting point and range.

5.10 Due to the low volume of offenders receiving a custodial sentence, and due to them being grouped at the lower end of the custody range,⁴ the impact on resources is likely to be minimal, involving fewer than five prison places.

TV Licence payment evasion

5.11 The new guideline for TV Licence payment evasion retains the same starting point for all categories, but changes the range for category 3 (lesser harm and lower culpability) offences, from a Band A fine⁵ only, to now include conditional discharges. This may result in a decrease in the number of offenders sentenced to fines in the lowest category, as some of these offenders may now instead receive a conditional discharge.

Speeding

5.12 The new guideline for speeding retains the same sentencing range for the middle and lower categories, but changes the sentencing range for the most serious category from a Band B fine to a Band C fine.⁶ This is expected to result in an increase in the value of fines for the most serious offence category.

6 SUPPORTING EVIDENCE

6.1 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 work in support of the guideline. Statistical analysis of current sentencing practice has been undertaken on selected offences to help inform the sentencing ranges in the guideline. Official sentencing statistics have been supplemented with a review of feedback on actual cases in the

⁴ In 2015 just under two thirds of offenders sentenced to immediate custody received a sentence of 10 weeks or less.

⁵ A Band A fine is the lowest level of fine. It has a value of 50% of the offender's relevant weekly income.

⁶ The value of a Band B fine is 100% of the offender's relevant weekly income. A Band C fine is the highest level of fine available for speeding, at 150% of the offender's relevant weekly income.

magistrates' courts, which has enabled the Council to identify the harm and culpability factors present in offences.

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 has been gathered by the Council as part of the guideline development and consultation phase. This included providing case scenarios as part of the consultation exercise which were intended to test whether the guideline has the intended effect and inviting views on the guideline. However, there were limitations on the number of factual scenarios that could 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 has been possible to detect and amend problematic areas of the new guideline.

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

7.5 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 magistrates and judges interpret them as intended. Sentencing ranges are agreed on by considering sentencing data in conjunction with Council members' experience of sentencing.

7.7 During the consultation stage, consultees fed in their views of the likely effect of the guidelines and whether this differed from the effects set out in the consultation stage resource assessment. It was then possible to amend the guideline accordingly. Following the release of guidelines, explanatory materials are provided to read alongside the guidelines, aiding their interpretation. 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.