

Final resource assessment: Sexual 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 services¹.

2 RATIONALE AND OBJECTIVES FOR NEW GUIDELINE

2.1 A new set of guidelines for sexual offences are needed to promote clarity and consistency in sentencing. The Sexual Offence Act 2003 has now been in force for nine years, and a clearer picture is available of the way that courts use the new offences which were created by the Act. In addition, since the existing guideline was drafted, there are areas where the nature of offending has changed. For example, there has been increased use of technology to facilitate the sexual exploitation and grooming of children, and there is now increased understanding of offenders' behaviour when targeting children. The guidelines need to be amended to reflect these developments.

2.2 Sexual offending is a very complex area, and to ensure consistency of approach to sentencing, it is important that judges and magistrates have relevant and up-to-date guidance. It is equally important that the process which is followed in arriving at sentences is transparent to victims and the public. These goals are particularly important due to the high volume of cases that come before the courts – in 2012, a total of 6,854 adults were sentenced for the offences covered by the new guideline.

2.3 In most areas, sentencing levels in the new guidelines have been set to correspond to current sentencing practice. However, this is a challenging exercise because of continual changes in sentencing patterns for sexual offences. Over the last decade there have been large changes to the volume of offenders being sentenced, increases in average custodial sentence lengths², and changes in societal attitudes towards the seriousness of offences. The situation is made even more complex by uncertainties surrounding the effects of Operation Yewtree.

2.4 To address these issues and ensure the Council has the best evidence on current sentencing practice, a variety of research and analysis exercises have been conducted, and are described in greater detail in section 5. Nonetheless, this dynamic environment means that the effects of the guideline on sentencing levels are subject to a heightened level of uncertainty.

¹ Coroners and Justice Act 2009 section 127

² See http://sentencingcouncil.judiciary.gov.uk/docs/Sexual_Offences_Data_Bulletin_%28web%29.pdf

3 CHANGES TO RESOURCE ASSESSMENT SINCE THE CONSULTATION STAGE RESOURCE ASSESSMENT

3.1 During the consultation period, the Council has conducted additional research into how the new guideline may be used by judges and the effect it may have on sentencing practice.

3.2 A primary part of this research has involved further qualitative interviews with judges. These interviews focussed on parts of the new guidelines where there was greatest uncertainty over the likely effect of the guidelines on sentencing levels.

3.3 In addition, the Council has conducted analysis of sentencing transcripts obtained from the Crown Court and Court of Appeal cases. This has provided another way to test the likely effects of the guidelines, because cases in the transcripts could be compared to the new guideline to see whether the sentence was likely to change.

3.4 For the majority of offences within the new guidelines, this research suggests sentencing levels in the new guidelines have been set at a level that is consistent with current sentencing practice. It therefore remains the case that, for most offences, the new guidelines are not expected to have significant resource impacts. However, the evidence which has been gathered indicates that for some cases of rape, the new guideline may cause some increases to sentencing levels. This resource assessment has been updated to reflect this possibility.

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. Any resource impacts which may fall elsewhere are therefore not included in this assessment.

4.2 It is important to recognise that this resource assessment considers only the direct effect of the proposed new guidelines on sentencing practice. Changes in sentencing caused by other factors, such as any potential effects of Operation Yewtree and its associated media coverage, are not within the scope of this assessment.

5 SUPPORTING EVIDENCE

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

5.2 A primary source of evidence has been the two phases of quantitative research interviews which have been conducted with judges. The first phase of the research explored judges' views on an early (pre-consultation) draft of the proposed new guidelines, and their implications in terms of sentencing behaviour. The second phase of interviews was conducted during the consultation period, with a focus on the possible effects of the proposed guidelines on sentencing practice.

5.3 These research activities were supported by an email survey of Crown Court judges to establish how they would sentence certain sexual offences under the present Sentencing Guidelines Council guidelines, and content analysis of sentencing transcripts and court of appeal cases for cases involving rape, and rape of a child under 13.

5.4 In addition to these qualitative research exercises, the Council has also performed detailed statistical analysis of current sentencing practice to help inform the sentencing ranges in the draft guideline.

5.5 Detailed reports for this work can be found at the following URL: <http://sentencingcouncil.judiciary.gov.uk/consultations-current.htm>

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 judges' behaviour may change across the full range of sentencing scenarios. Any estimates of the impact of the new guidelines 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 guidelines, and an assessment of the effects of changes to the structure and wording of the guidelines. Research work with Crown Court judges 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 guidelines 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.

6.4 Cost data has been provided by the Analytical Services Directorate at the Ministry of Justice. All costs are expressed in 2013/14 prices. No attempt has been made to make adjustments for possible future changes in the efficiency of the criminal justice system. The costs quoted in this document refer to the resource impact per annum. Since the resource impact is assumed to be constant through time in real terms, the implicit assumption is that the real cost of prison and probation services remain at current levels.

6.5 On this basis, a year in custody is assumed to cost an average of around £28,000, including local maintenance, but excluding capital build expenditure and overheads.

7 SENTENCING FOR SEXUAL OFFENCES

7.1 Detailed sentencing statistics for sexual 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 illustrate the substantial resources required for sentencing sexual offences.

7.2 Ministry of Justice statistics show that sexual offences accounted for 15% of the sentenced³ prison population on 30th September 2013. This translates into around 10,700 prisoners.

7.3 These figures do not include those in prison for indecent images offences, which for recording purposes are not categorised as 'sexual offences' in official statistics as they are not part of the Sexual Offences Act 2003. These offences account for around a further 0.6% of the sentenced prison population (around 400 prisoners).

7.4 The offences covered by the proposed new guideline also result in significant numbers of sentences of other disposal types. The following table contains a breakdown of the number of sentences for adults in the various disposal types.

Table 1: Number of adult offenders sentenced for the offences covered by the new guideline, 2012

	Number of adult sentences, 2012
Discharge	112
Fine	122
Community sentence	1,903
Suspended sentence	816
Immediate custody	3,779
Otherwise dealt with	122
Total	6,854

7.5 The above figures demonstrate that sentencing for sexual offences accounts for a significant part of correctional resources. Although in most areas the Sentencing Council's proposed guideline on sexual offences does not intend to cause shifts in the aggregate severity of sentencing, these figures show that if any change does materialise, the resource effects could be substantial.

8 RESOURCE IMPACTS OF THE GUIDELINES

8.1 For most offences, the new sentencing guidelines aim to promote consistency of sentencing for sexual offences, whilst leaving the average severity of sentencing unchanged. The intention for these offences is that average custodial sentence lengths, and the proportion of offenders receiving the various disposal types, will not change. For these offences it is expected, as a central estimate, that the new sentencing guideline will have no resource impact on the prison, probation or youth justice services.

8.2 During the consultation period research work conducted with Crown Court judges has suggested that for the some offences of rape, the new rape guideline may result in moderate uplifts to current sentencing levels in some instances, although the size of this effect is uncertain.

8.3 The Council has considered this effect, and believes that the sentencing levels set out in the rape guideline are proportionate to the levels of harm and culpability inherent in the commission of the offence. As such, it is now anticipated that the guideline for rape may cause additional resources to be required by the prison service.

³ Table 1.3a Offender management statistics quarterly, <http://www.justice.gov.uk/statistics/prisons-and-probation/oms-quarterly>

8.4 The resource impact of this effect have been estimated with reference to 2012 sentencing data, which shows that 773 offenders were sentenced to offences that would be covered by the new rape guideline. It has been assumed that similar numbers of offenders would be sentenced in future years.

8.5 The Sentencing Council's research indicates that the magnitude of increases in sentence lengths is subject to a substantial degree of uncertainty. Analysis of sentencing transcripts from the Crown Court and Court of Appeal broadly supported the view that the rape guideline may not cause shifts in sentence lengths. To reflect this work, as a lower bound estimate, we assume that the rape guideline has no resource effects. On the other hand, research interviews with Crown Court judges suggested that some sentences may increase, but this finding was not universal across judges. To reflect these findings, as a higher end estimate we estimate a moderate increase in sentence lengths (of around six months on average, before guilty plea discounts are applied).

8.6 Using these assumptions, the new rape guideline is estimated to result in a requirement for between 0-180 additional prison places, due to longer sentences for some offenders. This corresponds to an increase in the resources required for the prison service of around £0 - £5.0 million per annum.

9 RISKS

9.1 Since sentencing for sexual offences accounts for a significant proportion of the total correctional resources, small changes to sentencing practice have the potential to have substantial resource implications. It is not possible to fully anticipate how judges' sentencing behaviour will change as a result of the guideline, and hence there is uncertainty surrounding the estimates presented in this document.

9.2 Two main risks have been identified:

Risk 1: The resource effect of an increase in consistency is not neutral.

9.3 It is possible that any increases in consistency that result from the new guideline could cause resource effects. For a neutral resource impact, greater consistency would have to involve some lower end sentences being adjusted upwards, and some higher end sentences being adjusted downwards, with these effects cancelling each other out. However, it is possible that more sentences may be adjusted upwards than downwards, or vice versa, which would result in changes in the cost of sentencing. This is described in more detail in a separate analytical note on changes in the consistency of sentencing, which can be found at the following URL:

http://sentencingcouncil.judiciary.gov.uk/docs/Consistency_in_sentencing.pdf

Risk 2: Judges do not interpret the new guideline as intended.

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

9.5 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 Crown Court 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.

9.6 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.

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

Risk 3: Legislative changes affect the resource impacts of our guidelines.

9.8 The Secretary of State has announced his intentions to make changes to legislation on sentencing which is likely to affect sentencing for some sexual offences⁴. There is a risk that any such changes may affect the resources required for giving effect to sentences, which in turn could invalidate some of the assumptions used in this document.

⁴ <https://www.gov.uk/government/news/automatic-early-release-axed-for-child-rapists-and-terrorists>