

## **Final resource assessment – Guidelines on Allocation, TICs and Totality**

### **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 This resource assessment covers all three guidelines. This grouping has been made because the effects of the three guidelines on correctional resources are expected to be similar. However, the three guidelines deal with distinct issues; their grouping for the resource assessment should not be taken to imply they form a natural group in terms of subject matter.

### **2 Rationale and Objectives for the New Guidelines**

#### *Allocation*

2.1 There are currently no statutory guidelines regarding the allocation procedure.

2.2 The most important objective of the guideline is to ensure, insofar as it is possible, that all cases are heard in the most suitable court. In relation to allocation decisions, the Council wishes to encourage a consistent approach in the magistrates' court in line with statute.

#### *Offences Taken Into Consideration*

2.3 The Council has developed a guideline on offences taken into consideration (TICs) because whilst there is well-established practice on the matter there is no single source of guidance about the approach the courts should take.

2.4 The Council is seeking to support clarity and consistency. It is not seeking to bring about any change to sentencing practice other than where the application of the guideline might lead to greater consistency of approach.

## *Totality*

2.5 The Council is mandated by statute to provide a guideline on totality.<sup>1</sup>

2.6 The Council is seeking to support clarity and consistency. It is not seeking to bring about any change to sentencing practice other than where the application of the guideline might lead to greater consistency of approach.

### **3 Scope**

3.1 As stipulated by section 127 of the Coroners and Justice Act 2009, this assessment considers the resource impact of the guidelines 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 Data – Allocation**

4.1 An allocation decision must be made in all cases which are triable either way. Ministry of Justice figures<sup>2</sup> show that the number of adult (aged 18+) offenders proceeded against in such cases has risen in the past few years, from around 310,000 in 2007 to 353,000 in 2010<sup>3</sup>.

4.2 In 2010, 21% of adult defendants proceeded against triable either way cases (73,000 defendants) were committed for trial in the Crown Court.

4.3 The Ministry of Justice publish separate statistics<sup>4</sup> on the number of defendants committed for sentence at the Crown Court. However, these are not on the same basis as the figures above because they include offenders of all ages, and they do not include offenders who were later acquitted. In 2010, around 18,000 defendants were committed for sentence at the Crown Court.

### **5 Data – TICs**

5.1 Limited data exists on the application of TICs. The Crown Prosecution Service (CPS) have been able to provide the Council with data on the total number of offences taken into consideration, broken down by court type.

5.2 Although the CPS data shows the total number of offences taken into consideration, it does not show the number of cases in which TICs were relevant. The CPS do not hold this data nor can this be inferred from the data tables below because there may be many offences taken into consideration in a given case.

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<sup>1</sup> s.120(3) Coroners and Justice Act 2009

<sup>2</sup> Table A3.18, Criminal Justice Statistics 2010. <http://www.justice.gov.uk/publications/statistics-and-data/criminal-justice/criminal-annual.htm>

<sup>3</sup> These cover offenders proceeded against, rather than offenders sentenced. They cover only adult offenders (aged 18+). Therefore care should be taken when comparing them to the data presented on totality, which covered sentenced offenders of all ages. In addition, the figures for totality were from 2009, whereas these are from 2010.

<sup>4</sup> Table A5.53, Criminal Justice Statistics 2010. <http://www.justice.gov.uk/publications/statistics-and-data/criminal-justice/criminal-annual.htm>

Financial year 2010-11 Offences taken into consideration by court type<sup>5</sup>

Court Type	Offences
Magistrates' Court (MC)	13,849
Crown Court (CC)	10,006

## 6 Data - totality

6.1 The Ministry of Justice holds databases which contain information about each of the sentences which have been passed each year in courts in England and Wales. Where multiple offences are being sentenced on a single sentencing occasion, the databases contain information on the sentence for each individual offence.

6.2 However, the databases do not contain information about how these multiple individual sentences were combined into the single 'final' sentence. That is, they do not contain information about how judges apply the principle of totality, and whether the individual sentences were ordered to be served consecutively or concurrently.

6.3 It is therefore not possible to use national-level sentencing data to analyse *how* the principle of totality has been applied. However, the data can be used to consider the number and proportion of cases in which totality needs to be applied.

### Frequency of application of totality

6.4 In what follows, 'cases where totality needs to be applied' refers to cases in which an offender is sentenced for multiple offences simultaneously. This includes all cases where multiple offences are being sentenced, irrespective of whether the sentences are ordered to be served concurrently or consecutively.

6.5 The following table presents statistics concerning the application of totality, using sentencing statistics from 2009. The data covers offenders of all ages.

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<sup>5</sup> Source: Crown Prosecution Service. This data is subject to the following caveats:

a) Data in the table provided relates to the number of offences taken into consideration recorded in magistrates' courts and in the Crown Court on the CPS's Case Management System.

b) Offences data are not held by defendant or prosecution outcome. These are offences which reached a first hearing and there is no indication in these data if the original charged offence was the substantive charge at finalisation.

c) These data have been drawn from the CPS's administrative IT system, which, as with any large scale recording system, is subject to possible errors with data entry and processing. The figures are provisional and subject to change as more information is recorded by the CPS.

<b>Category</b>	<b>Absolute number of sentencing occasions in category</b>	<b>Percentage of sentencing occasions in which totality needed to be applied</b>
All sentences	1,406,000	24%
Magistrates' courts	1,311,000	22%
Crown Court	95,000	48%
Non-custodial sentences	1,306,000	22%
Custodial sentences	100,000	56%

Source: Previously unpublished statistics from the Ministry of Justice Court Proceedings Database 2009.

6.6 Overall, in around 24% of sentencing occasions, the offender was sentenced for multiple offences.

6.7 The data shows that in more serious cases (for example, in the Crown Court or where a custodial sentence has been handed down), offenders were much more likely to be sentenced for multiple offences. This amplifies the potential resource effect of any change in the application of totality, because totality is disproportionately likely to be applied to sentences which have the greatest cost.

## **7 Resource impact – central estimate**

7.1 The new sentencing guidelines are not expected to affect the average severity of sentences. As such, it is expected that average custodial sentence lengths, and the proportion of offenders receiving the various disposal types, will not change.

7.2 The central estimate is therefore that the new sentencing guidelines will have no resource impact on the prison, probation or youth justice services.

## **8 Risks**

8.1 At least one of the three proposed guidelines applies in a large proportion of the cases coming before the courts. For instance, the principle of totality must be applied in almost a quarter of cases which are sentenced, and allocation decisions apply to around 300,000 of the 1.7 million defendants proceeded against each year.

8.2 The aims of each of the three guidelines are set out in section 2, above. These aims do not include any intention to affect the average severity of sentencing, and as such, no resource effect is expected. However, since they apply to such large numbers of cases, if any changes do occur, they have the potential to have a substantial resource effect. There are two main sources of uncertainty.

8.3 First, it is not possible to fully anticipate how judges' sentencing behaviour will change as a result of the new guidelines, and hence there is uncertainty surrounding the central estimate that the guideline will have no resource impact.

8.4 The Council takes a number of precautions in issuing new guidelines to try to ensure that they have the intended effect. The Council has several expert advisors from various disciplines who scrutinise the guidelines. Guidelines are also road-tested. 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.

8.5 Nevertheless, any change to the sentencing guidance given to judges may have unintended consequences, and could cause shifts in the average severity of sentencing, with associated resource effects.

8.6 A second source of uncertainty is the effect of increased consistency in sentencing that could result from the new guidelines.

8.7 The central estimate that there will be no resource impact of the new guidelines contains the implicit assumption about the nature of inconsistency in sentencing: For a neutral resource impact, greater consistency would involve some lower end sentences being adjusted upwards, and some higher end sentences being adjusted downwards, with these effects cancelling each another out. However, it is possible that more sentences may be adjusted downwards than upwards, or vice versa, which would result in changes in the cost of sentencing. This is discussed further in a separate analytical note which can be found at the following URL:

[http://sentencingcouncil.judiciary.gov.uk/docs/Consistency\\_in\\_sentencing.pdf](http://sentencingcouncil.judiciary.gov.uk/docs/Consistency_in_sentencing.pdf)

8.8 No attempt has been made to quantify the two types of uncertainty identified above. To do so, a number of strong assumptions would have to be made about judges' current behaviour, and the extent and nature of any inconsistency in current practice. Due to limitations in our knowledge, these assumptions could not be based upon any empirical evidence. Any estimates obtained through modelling rather than from empirical evidence would be extremely sensitive to the assumptions made, and so would not be a helpful guide to the possible resource impacts.