

Sentencing Council

Final resource assessment – Burglary

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 The Council wishes to promote a clear, fair and consistent approach to sentencing. The Council's rationale for producing a burglary guideline is that it enables the Council to respond to the Sentencing Advisory Panel's (SAP) advice entitled *Sentencing for Domestic Burglary*² and also brings the three burglary offences into a single guideline under a single approach.

2.2 17,387³ adult offenders were sentenced for burglary in 2009, making it a relatively high volume offence. Currently there is a Crown Court guideline on non domestic burglary⁴ but no guideline on domestic or aggravated burglary. The Magistrates' Court Sentencing Guidelines (MCSG) provides guidelines on both domestic and non domestic burglary when sentenced in the magistrates' court.

2.3 The Council is seeking through the burglary guideline to promote a consistent and proportionate approach to the sentencing of these offences. In order to ensure coherence across the jurisdictions, this guideline will apply to both the Crown Court and to magistrates' courts.

2.4 The Council has considered both case law and current sentencing practice during the development of this guideline. The Council believes that the current severity of sentencing for these offences is appropriate and is relatively proportionate both within each offence and when comparing the offences with each other. Therefore the guideline aims to increase the consistency of sentencing whilst leaving the aggregate severity of sentencing unchanged.

¹ Coroners and Justice Act 2009 section 127

² Sentencing Advisory Panel (2010) *Advice to the Sentencing Guidelines Council: Sentencing for Domestic Burglary*.

³ See the 'data sources and quality' section, on page i of <http://www.justice.gov.uk/publications/docs/sentencing-stats2009.pdf>

⁴ Sentencing Guidelines Council (2008) *Theft and burglary in a building other than a dwelling: Definitive Guideline*.

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

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. However, strong assumptions must be made, in part due to the inherent unpredictability of human behaviour. 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 new guideline, and an assessment of the effects of changes to the structure and wording of the guideline.

4.3 Cost data has been provided by the Analytical Services Directorate at the Ministry of Justice. All costs are expressed in 2011/12 prices. No attempt has been made to make adjustments for possible future changes in the efficiency of the criminal justice system. It is therefore assumed that the real cost of prison and probation services remain at current levels.

4.4 The costs quoted in this document exclude capital build costs and overheads. On this basis, a year in custody is assumed to cost an average of around £30,000, including local maintenance, but excluding capital build expenditure and overheads. The average cost of a community order is assumed to be around £2,800.

4.5 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 may have occurred whether or not the new guideline was published are therefore not included in the estimates.

5 The cost of sentencing for burglary

5.1 The Court Proceedings Database shows that 17,387⁵ adult offenders were sentenced for burglary in 2009. The following table shows the offence types covered by the new guideline, and the number of offenders sentenced within each category:

⁵ See footnote 2

Offence Description	Number of adult offenders sentenced in 2009
Domestic burglary	9670
Non-domestic burglary	7452
Aggravated burglary	265

5.2 Data on sentencing practice can be combined with cost data to estimate the total cost of sentencing for burglary. In 2009, it is estimated that offenders who had been sentenced for burglary cost the prison service around £210m and the probation service around £20m.

5.3 In addition, it is estimated that the offenders sentenced to burglary cost the youth justice services around £30m.

6 Resource impact – central estimate

6.1 The new sentencing guideline aims to increase consistency of sentencing for burglary, whilst leaving the average severity of sentencing unchanged. The intention, therefore, is that average custodial sentence lengths, and the proportion of offenders receiving the various disposal types, will not change.

6.2 As such, it is expected, as a central estimate, that the new sentencing guideline will have no resource impact on the prison and probation services. The new guideline applies to adults only, so no resource impact is expected on the youth justice services either.

7 Risks

7.1 Since sentencing for burglary costs around £260m a year, 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 central estimate that the guideline will have no resource impact.

7.2 Two main risks have been identified:

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

7.4 The central estimate that there will be no resource impact of the new guideline contains an implicit assumption about the nature of inconsistency in sentencing: 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 another 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://www.sentencingcouncil.org.uk/docs/Consistency_in_sentencing.pdf

7.5 Risk 2: Judges do not interpret the new guideline as intended. This could cause a change in the average severity of sentencing, with associated resource effects.

7.6 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. 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.

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

Quantification of uncertainty

7.8 No attempt has been made to quantify the uncertainty surrounding the resource effects of risk 1, above. Such an attempt would not add value because it would be heavily reliant on strong assumptions which could not be verified empirically.

7.9 To consider the size of the resource effect if risk 2 were to materialise, historical changes in sentencing practice for burglary were considered.

7.10 Analysis was conducted to measure the effect of the Court of Appeal judgement, *R v Saw and others*, on sentencing practice. This was a ruling passed in early 2009 which actively promoted a greater use of custody and longer custodial sentence lengths for offenders being sentenced for burglary in a dwelling. It was estimated that at most, this ruling had a resource impact of around 5% of the total cost of sentencing.

7.11 The burglary guideline does not aim to change the average severity of sentencing. Even in an upper or lower bound scenario, it is therefore considered that any changes to sentencing practice would be less pronounced than those that followed the *Saw* ruling. It was therefore assumed that at most, the change in sentencing practice due to risk 1 would be half as great as the changes that followed *Saw*, or $\pm 2.5\%$ of the total cost of sentencing.

7.12 Both of the risks which have been identified may have a positive or a negative resource effect, and there is no empirical evidence available to suggest which way the effect will go. A null effect is therefore considered to be the most appropriate central estimate of the resource effects of the new guideline.

7.13 The quantification of the resource effects of the risk required very strong assumptions, since little empirical evidence is available to inform them. The figures should therefore be treated as indicative only.