

Assessing the impact of the Sentencing Council's Fraud, Bribery and Money Laundering Definitive Guideline

Summary

- Analysis was undertaken to assess the impact on sentence outcomes of the Sentencing Council's Fraud, Bribery and Money Laundering Offences definitive guideline, which came into force in October 2014.
- The aim of the guideline was to improve consistency of sentencing, but not to cause changes in the types of sentences passed overall. The resource assessment stated that the guideline was developed with current sentencing practice in mind, although for some of the offences, data issues or low volumes meant that only limited evidence had been available on which to base sentence levels. This assessment has focused on trends in sentencing outcomes and whether average sentencing practice changed following the introduction of the guideline.
- For all offences analysed, there is no evidence that the guideline caused a change in average sentencing severity.¹ For most offences, average severity either stayed within the expected boundaries (based on historical data) or volumes were too low to assess with robustness whether the guideline had caused a shift.
- Charging practices for the two main benefit fraud offences² changed during a two-year period before the implementation of the guideline, making it difficult to interpret trends in sentencing for benefit fraud offences. However, it seems that the trends in sentencing severity were largely caused by the changing prosecution policy and not by the implementation of the guideline.
- For the benefit fraud offence of false representations³, there was a substantial increase in the average severity of sentencing towards the end of the period of study, in late 2015. However, data for 2016 has recently become available and shows that sentencing severity decreased again in April 2016, remaining at a similar level thereafter. It is not yet known what caused this increase, but there is no clear evidence to suggest that this was due to the guideline, and

¹ See the Methodology section (the bottom of page 4 to the top of page 5) for a definition of 'sentencing severity'.

² Dishonest representations for obtaining benefit etc., Social Security Administration Act 1992 (section 111A), and false representations for obtaining benefit etc., Social Security Administration Act 1992 (section 112).

³ False representations for obtaining benefit etc., Social Security Administration Act 1992 (section 112).

as the maximum sentence for this offence is only three months in custody or a level five fine⁴, there would have been little impact on the prison population.

- Regression analysis of Crown Court Sentencing Survey (CCSS) data indicated that some factors that appeared in both the old and new guidelines now have a stronger influence on average sentence severity. However, these changes do not seem to have caused a change in average sentence severity overall.
- The Council will continue to review the impact of the guideline over time, but as this assessment has not shown that the guideline has had an unanticipated impact on sentencing practice, no revision of the guideline is currently planned.

Introduction

The Sentencing Council was set up in 2010 and produces guidelines for use by all members of the judiciary who sentence criminal offences. The Fraud, Bribery and Money Laundering Offences definitive guideline came into force in October 2014,^{5,6} and includes seven guidelines, as listed below (note that these are only the names of the guidelines, and not necessarily an indication of which offences they cover):

- Fraud;⁷
- Possessing, Making or Supplying Articles for use in Fraud;
- Revenue Fraud;
- Benefit Fraud;
- Money Laundering;
- Bribery; and,
- Corporate Offenders.

One of the Sentencing Council's statutory duties under the Coroners and Justice Act 2009 is to monitor the operation and effect of its sentencing guidelines and to draw conclusions from this information.⁸ Research and analysis was therefore undertaken to assess the impact of the guidelines on sentencing outcomes.

Each of the guidelines listed above covers multiple offences and most of the guidelines include offences with a variety of statutory maximum sentences. To

⁴ For offences committed before 13 March 2015, the level 5 maximum fine was £5,000. Since then, a level 5 fine is unlimited.

⁵ See https://www.sentencingcouncil.org.uk/wp-content/uploads/Fraud_bribery_and_money_laundering_offences_-_Definitive_guideline.pdf.

⁶ This guideline replaced the 'Sentencing for Fraud – Statutory Offences' guideline implemented by the Sentencing Guidelines Council (the predecessor body to the Sentencing Council).

⁷ This is the name of one guideline, and does not encompass all fraud offences.

⁸ The Council must (a) monitor the operation and effect of its sentencing guidelines, and (b) consider what conclusions can be drawn from the information obtained by virtue of paragraph (a) (*Coroners and Justice Act 2009, Section 128*).

accommodate this, most of the guidelines include more than one sentencing table (for example, the Revenue Fraud guideline covers ten offences with three different statutory maxima, and so includes three different sentencing tables).

An added complication for this analysis is that some offences are covered by more than one guideline: fraud by false representation, fraud by failing to disclose information and fraud by abuse of position (Fraud Act 2006, section 1); conspiracy to defraud (Common law); and false accounting (Theft Act 1968, section 17) are all covered by the Fraud guideline, the Revenue Fraud guideline and the Benefit Fraud guideline. It is not possible to tell from the data which guideline was used to sentence each of these offences, and so most of this report deals with trends in *offences*, rather than offences under each *guideline*. For example, conspiracy to defraud is analysed as a whole, and not broken down by each of the guidelines it is covered by. It is recommended that this report is read alongside the guideline itself, to ease understanding.

Approach

The findings of the analysis should be considered in light of the resource assessment, which was produced to accompany the Fraud, Bribery and Money Laundering Offences definitive guideline.⁹

The Council has a statutory duty to produce a resource assessment¹⁰ alongside each definitive sentencing guideline it publishes. The resource assessment is concerned with anticipating any impact on sentencing practice that is expected to occur as a result of the guideline, over and above any changes caused by unrelated issues (e.g. changes in the volume and nature of cases coming before the courts).

The resource assessment associated with the definitive Fraud, Bribery and Money Laundering Offences guideline expected the guideline to improve consistency of sentencing but not to cause changes in the use of disposal types.

By comparing the expected impact of the guideline with the actual impact observed in the sentencing data, the Council can determine whether the guideline is working as anticipated and decide whether any further work needs to be conducted.

Methodology

In 2012, the Sentencing Council commissioned qualitative research to explore victims' views of the impact of online fraud and of sentencing of related offences. The published paper¹¹ included an evidence review of existing literature, interviews with key fraud prevention stakeholders and interviews and focus groups with victims of

⁹ See https://www.sentencingcouncil.org.uk/wp-content/uploads/Final_Resource_Assessment_Fraud_offences.pdf.

¹⁰ This was undertaken as part of guideline development work and to fulfil the Sentencing Council's statutory duties under s.127 of the Coroners and Justice Act 2009 to consider the likely effect of its guidelines on prison, probation and youth justice resources.

¹¹ 'Online Fraud Victims in England and Wales: Victims' Views on Sentencing and the Opportunity for Restorative Justice?' Mark Button, Carol McNaughton Nicholls, Jane Kerr and Rachael Owen, February 2015. Full publication available here: <http://onlinelibrary.wiley.com/doi/10.1111/hojo.12123/abstract>.

online fraud. This new analysis looks quantitatively at the impact of the guideline on sentencing outcomes.

Data from the Ministry of Justice's Court Proceedings Database (CPD)¹² has been used to explore long term sentencing trends for fraud, bribery and money laundering offences, in particular looking at sentence outcomes and average custodial sentence lengths (ACSLs).¹³

The CPD data was used to produce descriptive statistics to observe changes in the type of disposals being imposed for the different offences and the ACSL¹⁴ for each offence, in the 12 months before and the 12 months after the guideline came into effect.

However, this does not account for any fluctuations in the average severity of sentencing over time due to changes in sentencing practice which are unrelated to guidelines – e.g. the changing number and seriousness of cases coming before the courts, changes in charging practice etc. The data was therefore used to produce time series models¹⁵ to help distinguish between the normal fluctuations which are inherent in all sentencing data, and changes in sentencing that, statistically speaking, can be attributed to the new guideline. This was designed to assess whether it was likely that any observed changes to sentencing practice would have occurred if no guideline had been released.

The type of time series models that were used required sentencing data to be comparable - but the data included a mix of sentences comprising different sentence types and sentence lengths. To overcome this, sentences were converted into a continuous "severity scale" with scores ranging from 0 to 100, representing the full range of sentence outcomes from a discharge (represented by 0) to 20 years' custody (represented by 100); this allowed the creation of a consistent and

¹² Data covers sentences in all courts, for offenders aged 18 or over. Data has been adjusted to account for potential differences in the rate of guilty pleas between the periods. This adjustment was made using guilty plea rates and reductions from the Crown Court Sentencing Survey database, to estimate pre-guilty plea sentences, to make the figures presented comparable to the sentence ranges in the guideline.

¹³ The CPD data presented in this paper only include cases where the fraud, bribery or money laundering offence was the principal offence committed. When a defendant has been found guilty of two or more offences this 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. Although the offender will receive a sentence for each of the offences that they are convicted of, it is only the sentence for the principal offence that is presented in this analysis. It is important to note that the CPD 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. Further details of the processes by which MoJ validate the records in the CPD can be found within the guide to their Criminal Justice Statistics publication which can be downloaded via the link: <https://www.gov.uk/government/collections/criminal-justice-statistics>.

¹⁴ The average custodial sentence length (ACSL) is the average (mean) sentence length for determinate custodial sentences only. It therefore excludes indeterminate sentences (life or Imprisonment for Public Protection, IPPs). This approach for calculating ACSL is consistent with that used for sentencing statistics produced by the Ministry of Justice. Finally, the ACSLs have been adjusted using data from the CCSS to provide estimates of the sentence length *before* the application of a reduction for any guilty plea. These estimates allow a better assessment of the use of sentencing guidelines as the category ranges specified in the guidelines are those before any guilty plea reduction is applied.

¹⁵ ARIMA (Autoregressive Integrated Moving Average) models were used to analyse average severity over time and forecast the range of likely values for the period following the introduction of the guideline.

continuous measure of sentencing severity that could be used to evaluate changes in sentencing. However, the scale should not be interpreted as an absolute objective measure of sentencing severity.¹⁶

All references to 'average sentence severity' in this paper refer to the mean value of all severity scores of offenders (using the scale described above) sentenced within the period mentioned. For example, if the text says that average sentence severity increased from 2014 to 2015, then this means that the mean value of all severity scores for 2015 was higher than the mean value for 2014.

The time series charts (on pages 9-11 and 14-15) show the average sentencing severity in each month over time (represented by a continuous blue line). The shaded regions seen from October 2014 onwards show the range of values that we would have expected the average sentencing severity line to fall within in the absence of the guideline,¹⁷ referred to in this paper as the "*forecasted severity region*". By comparing the actual trend (the blue line) with the forecasted severity region, the difference between actual and expected sentencing changes can be seen, and can tell us whether the guidelines may have caused a change.

Offences included in the analysis

Only the offences covered by the guideline are included, so discussion of 'all fraud offences' refers only to all of the offences covered by the guideline and for which we have data. There are many other offences related to fraud that are not covered by the guideline¹⁸, but these are generally very low volume, especially in comparison to those covered by the guideline.

The guideline on corporate offenders was not included in the analysis, as the number of corporate offenders sentenced for these offences was very low.

Court Proceedings Database (CPD) analysis

For the trend analysis, data from 2006 to 2015 has been used, as the Fraud Act came into effect in 2006 and so this was chosen as a sensible start date, and data up to 2015 was the latest available at the time. For newer offences¹⁹, a shorter time period has been included.

For some of the offences covered by the guideline, no data has been available for analysis, and this is largely due to the way offences are grouped within the CPD. In

¹⁶ The sentencing severity scale was created with reference to previous sentencing guidelines to try to ensure it had an empirical basis. It is likely to have limitations, but currently gives our best estimate to quantify the relative severity of different disposals.

¹⁷ The lighter shade of grey shows the 80% confidence interval, and the darker shade shows the 95% confidence interval. Overall, we would usually expect the severity line to stay within the boundaries of the wider grey area (the 95% confidence interval). This means that if the line falls outside the region, it is unlikely to have happened due to chance or because of natural fluctuations, and instead more likely to be due to something else, such as the introduction of the guideline.

¹⁸ For example, these include: Theft Act 1968 S15 (obtaining property by deception) and S24A (dishonestly retaining a wrongful credit); Fraud Act 2006 S9 (participating in fraudulent business carried on by sole trader) and S11 (by any dishonest act obtaining services for which payment is required, with intent to avoid payment).

¹⁹ This includes the offences covered by the Bribery Act 2010, for which data are only available from 2010 onwards.

addition, some offence codes within the data refer to more than one different offence. If it has not been possible to identify with some confidence the specific offence covered by the guideline, then the data has been excluded from the analysis.

For the statistical tests comparing 12 months of data from before the guideline with 12 months of data from after the guideline, the 'pre' period is taken as July 2013 to the end of June 2014 and the 'post' period is taken as October 2014 to the end of September 2015. This excludes most of the period when the guideline was published but not yet in force.

Crown Court Sentencing Survey (CCSS) analysis

The CCSS²⁰ was a paper-based survey completed by the sentencing judge passing sentence in the Crown Court, from 1st October 2010 to 31st March 2015. It collected information on the factors taken into account by the judge in working out the appropriate sentence for an offender and the final sentence given.

Analysis of fraud and money laundering data from the CCSS was conducted to explore the prevalence of different guideline factors and levels of culpability and harm, and regression analysis was carried out to investigate the influence of the different guideline factors on sentencing outcomes.²¹ Bribery analysis was not possible due to low volumes.

Findings

Trends in all offences

Volumes of adult offenders sentenced for all fraud offences²² increased gradually, from 10,300 in 2006 to 19,300 in 2013, largely driven by the new offences brought in under the Fraud Act 2006. Volumes then decreased to 15,100 in 2015.

From 2006 to 2015, across all offences, there was a decline in the use of discharges and community orders (COs), and an increase in the use of suspended sentence orders (SSOs)²³ and immediate custody. However, COs are still the most common disposal, accounting for 31 per cent of adult offenders sentenced for these offences in 2015.

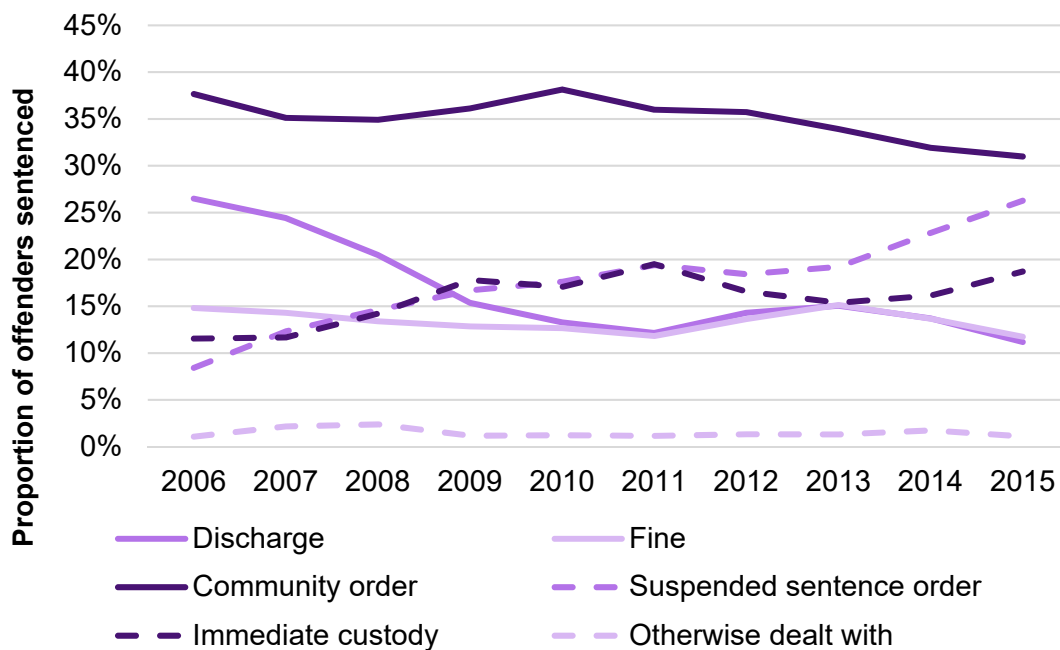
²⁰ See <http://www.sentencingcouncil.org.uk/analysis-and-research/crown-court-sentencing-survey/> for further information on the Crown Court Sentencing Survey.

²¹ This analysis used unadjusted CCSS data (see footnote 11).

²² Figures quoted here are those for adult offenders sentenced for offences covered by the guideline, for which data are available: Fraud Act 2006 S1 (fraud by false representation, fraud by failing to disclose information and fraud by abuse of position), S6 (possession of articles for use in fraud) and S7 (making or supplying articles for use in fraud); Conspiracy to defraud; Cheat the public revenue; Theft Act 1968 S17 (false accounting); Customs and Excise Management Act 1979 sections 50, 68, 170 and 170B (fraudulent evasion of duty); Social Security Administration Act 1992 S111A (dishonest representations for obtaining benefits) and S112 (false representations for obtaining benefits); Proceeds of Crime Act 2002 S327 (Concealing/ disguising/ converting/ transferring/ removing criminal property from England & Wales), S328 (Entering into arrangements concerning criminal property) and S329 (Acquisition, use and possession of criminal property); and Bribery Act 2010 S1 (bribing another person) and S2 (being bribed).

²³ The increased use of SSOs and decreased use of COs is a trend that has been seen across a wide range of offences in the criminal justice system, and this is discussed in more detail in the Ministry of Justice annual publication, Criminal Justice System Statistics: <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2016>.

Figure 1 - Sentencing outcomes for fraud offences, 2006 to 2015



Most ACSLs remained fairly stable over the period; there were some small increases, but these affected only a few offences and will be discussed later.

Offence-specific findings

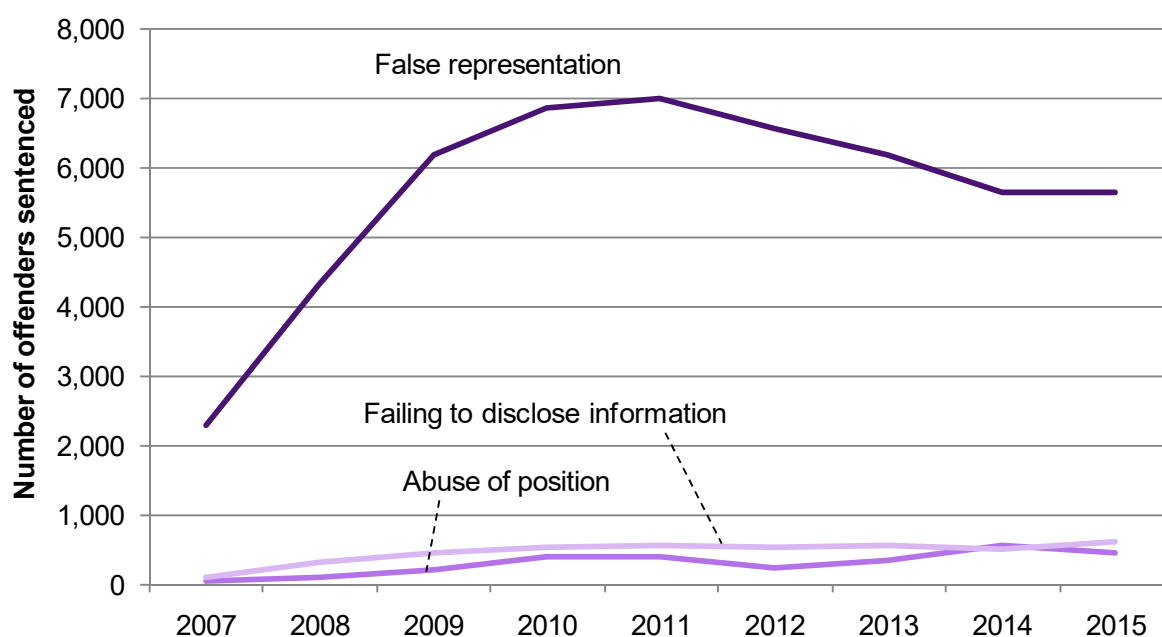
While the analysis suggests that the guideline has not had an overall effect on average sentencing severity, some small changes were noticed for some specific offences, as outlined in the following sections.

Fraud Act 2006 (Section 1)

Section 1 of the Fraud Act 2006 relates to the offences of fraud by false representation, fraud by failing to disclose information and fraud by abuse of position. These are all triable either way offences with a maximum sentence of 10 years' custody. All three of these offences appear in multiple guidelines – the Fraud guideline, the Revenue Fraud guideline and the Benefit Fraud guideline. However, within the CPD data, it is not possible to determine which guideline was used to sentence each offender.

As the legislation creating these offences only came into force in 2007, the volume of offenders sentenced gradually increased until 2011, but then dropped slightly until 2015. The offence of false representation is the most common of the three offences, making up 84 per cent of offenders sentenced under section 1 in 2015.

Figure 2 - Adult offenders sentenced for offences under the Fraud Act 2006 (Section 1), 2007 to 2015



More detail on sentencing trends following the introduction of the definitive guideline for each of the three offences is given below.

1. *False representation*

For false representation, the most common of the three offences, the volume increased from 2,300 offenders sentenced in 2007 to 7,000 in 2011. Since then, the volume has decreased, to 5,600 in 2015.

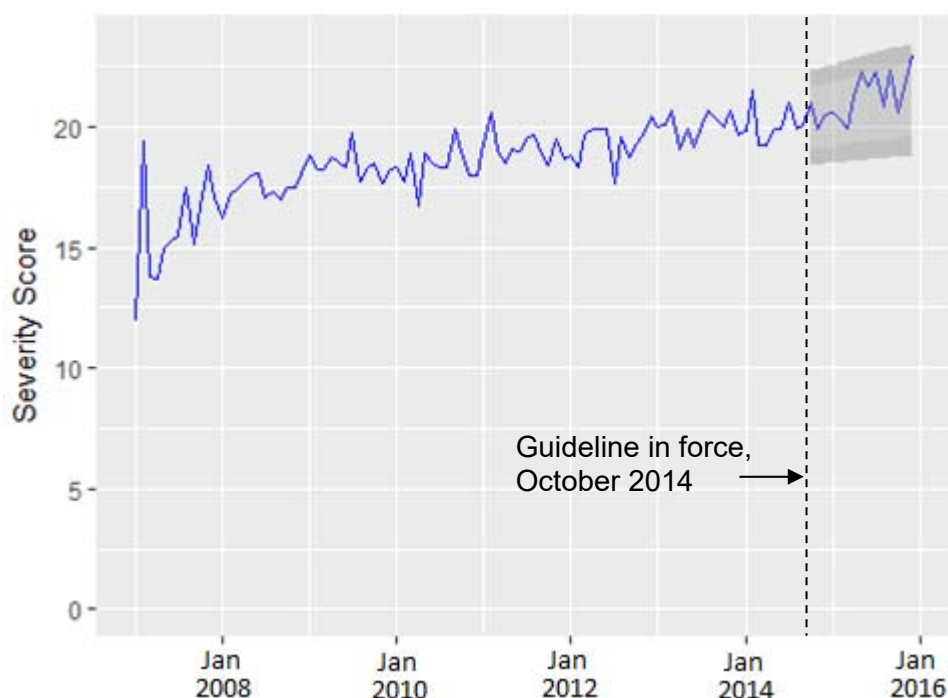
There was an indication of an increase in average sentence severity months after the introduction of the guideline (see Figure 3), but well within the boundaries of what would be expected based on historical trends. Severity had already been gradually increasing since the beginning of the observation period, but seemed to increase more sharply in 2015. The gradual increase was largely driven by an increased use of SSOs (and corresponding decreased use of COs), and a slight increase in the ACSL. Both of these long-term patterns mirror trends seen across many offences within the criminal justice system over this period²⁴, and although statistical tests²⁵ showed a statistically significant²⁶ increase in average sentence severity between the 12 month 'pre' and 'post' guideline periods, as severity had been increasing over time, and the increase did not occur immediately on implementation of the guideline there is no strong evidence to suggest that the guideline caused this increase.

²⁴ These wider trends in sentencing are discussed in more detail in the Ministry of Justice annual publication, Criminal Justice System Statistics: <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2016>.

²⁵ Statistical tests known as "t-tests" were carried out to determine whether the two groups (the 'pre' and 'post' guideline sentences) had significantly different average values.

²⁶ All statistical t-tests in this evaluation are testing for a change at the 5% significance level.

Figure 3 – Average sentencing severity – Fraud Act 2006, Section 1 - False representation, 2007 to 2015



2. Failing to disclose information and abuse of position

For the offences of failing to disclose information and abuse of position, time series analysis showed that the post-guideline trend stayed well within the expected boundaries of sentencing severity; in addition, there was no statistically significant difference in severity when comparing 12 months of pre-guideline sentences with those 12 months post, suggesting the guideline had no effect on average severity.

Possessing, making or supplying articles for use in fraud

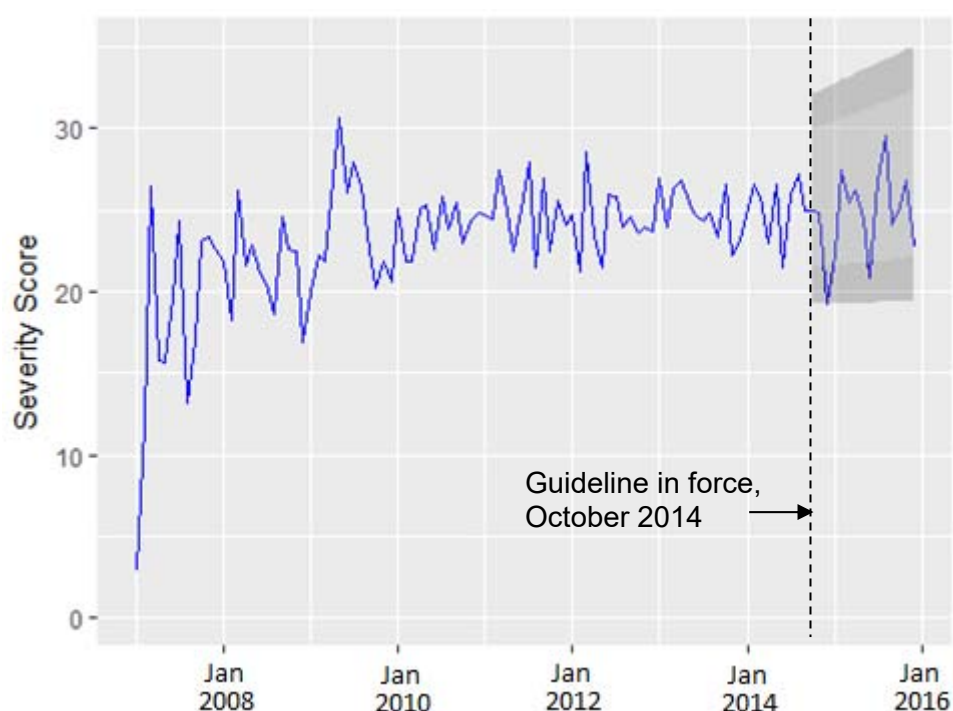
The guideline for possessing, making or supplying articles for use in fraud covers two triable either way offences introduced under the Fraud Act 2006 (possessing articles, with a maximum sentence of five years' custody, and making or supplying articles, with a maximum sentence of 10 years' custody).

1. Possessing articles

Volumes for the offence of possessing articles gradually increased for the first few years, peaking at 590 adult offenders sentenced in 2011, and then decreased slightly to 460 in 2015. Over the years when volumes were sufficiently high to analyse, the proportion of offenders receiving each sentencing disposal varied considerably. Over the whole period from 2007 to 2015, there was a slight decrease in the use of conditional discharges and fines, and an increase in the use of COs, SSOs and immediate custody, but the trend was not consistent year-to-year. However, the most common outcome throughout the period was immediate custody, accounting for 46 per cent of offenders sentenced in 2015.

The time series analysis (see Figure 4) showed two notable drops in average sentence severity following the introduction of the guideline, where severity almost reached the lowest expected value, but generally the trend stayed within the expected boundaries and so there is only limited evidence of a possible decrease. There appears to be more variability in sentencing severity after the introduction of the guideline, but this could be due to changes in the types of offence appearing before the courts, and the fact that it is a low volume offence, which makes it subject to higher volatility than would be expected from a more commonly sentenced offence. Overall, the guideline appears not to have had an effect on average severity, and there is no statistically significant difference between the 'pre' and 'post' 12 month periods.

Figure 4 – Average sentencing severity - Possessing articles for use in fraud, 2007 to 2015



2. Making/ adapting/ supplying articles

The offence of making, adapting or supplying articles for use in fraud is low volume, with fewer than 100 offenders sentenced each year.

The low volumes for this offence led to a very volatile time series, and so it is difficult to interpret the results of the analysis in a meaningful way. However, there does not seem to have been a change in average sentence severity following the introduction of the guideline, and the comparison of 12 months 'pre-guideline' data with 12 months of 'post-guideline' data showed no significant difference.

False accounting and conspiracy to defraud

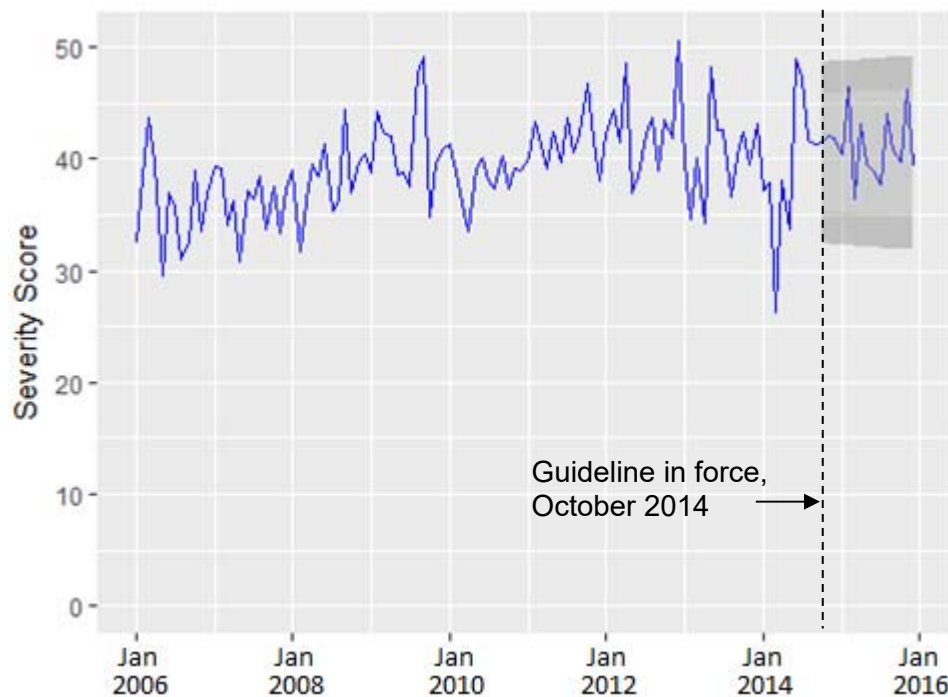
False accounting and conspiracy to defraud are each covered by three of the guidelines: Fraud, Revenue Fraud and Benefit Fraud. Within the CPD data, it is not

possible to determine which guideline was used when sentencing. The statutory maximum sentence for false accounting is seven years' custody, and for conspiracy to defraud is 10 years' custody, but for each of these offences, the sentencing ranges differ slightly in each of the guidelines. For example, the sentencing range for conspiracy to defraud in the Fraud guideline spans from a discharge up to 8 years' custody, and covers five levels of harm, but in the Revenue Fraud guideline, the range spans from a low-level CO up to 8 years' custody, and covers four levels of harm.

False accounting is a very low volume offence, with 40 offenders sentenced in 2015. The low volume of offenders sentenced for this offence make it difficult to interpret time series analysis findings, but there is no clear evidence that the guideline caused a change in average sentencing severity for this offence.

For conspiracy to defraud, volumes have gradually decreased over the last ten years, from 550 offenders sentenced in 2006 to 310 in 2015. Time series analysis (see Figure 5) indicated that there was no change in average sentencing severity following the introduction of the guideline, and so it is not thought that the guideline had an effect on average severity.²⁷

Figure 5 – Average sentencing severity - Conspiracy to defraud, 2006 to 2015



²⁷ The t-test comparing 12 months 'pre-guideline' with 12 months 'post' showed a statistically significant increase in sentencing severity, but this is likely to be at least partly due to a possible outlier from the 'pre' period, from a month when average severity was unusually low (as can be seen in Figure 5). Therefore, the significance test was not considered to be the best measure of the effect of the guideline for this offence.

Cheat the public revenue

The offence of cheating the public revenue is a common law offence. Since 2011, a small number of offenders have been sentenced for this offence, with around 100 adult offenders sentenced in 2015. Cheating the public revenue is an indictable only offence with a maximum sentence of life imprisonment.

The volumes are too low to interpret the time series in a meaningful way, but as there does not seem to have been a change in average sentence severity over time, and there was no statistically significant difference when comparing 12 months of 'pre-guideline' data with 12 months of 'post-guideline' data, the guideline does not seem to have had an effect on average sentencing severity.

Fraudulent evasion of excise duty – improper importation of goods

The Revenue Fraud guideline covers several sections of the Customs and Excise Management Act 1979 (sections 50, 170 and 170B), for offences with a maximum sentence of 7 years' custody.²⁸

The number of offenders sentenced for these offences decreased from 360 in 2006 to 170 in 2011, and then increased to 310 in 2015.

Sentencing severity for this offence varied widely over the period. Following the introduction of the guideline, average sentencing severity continued to fluctuate, and so interpretation of the results is not meaningful.

Benefit fraud

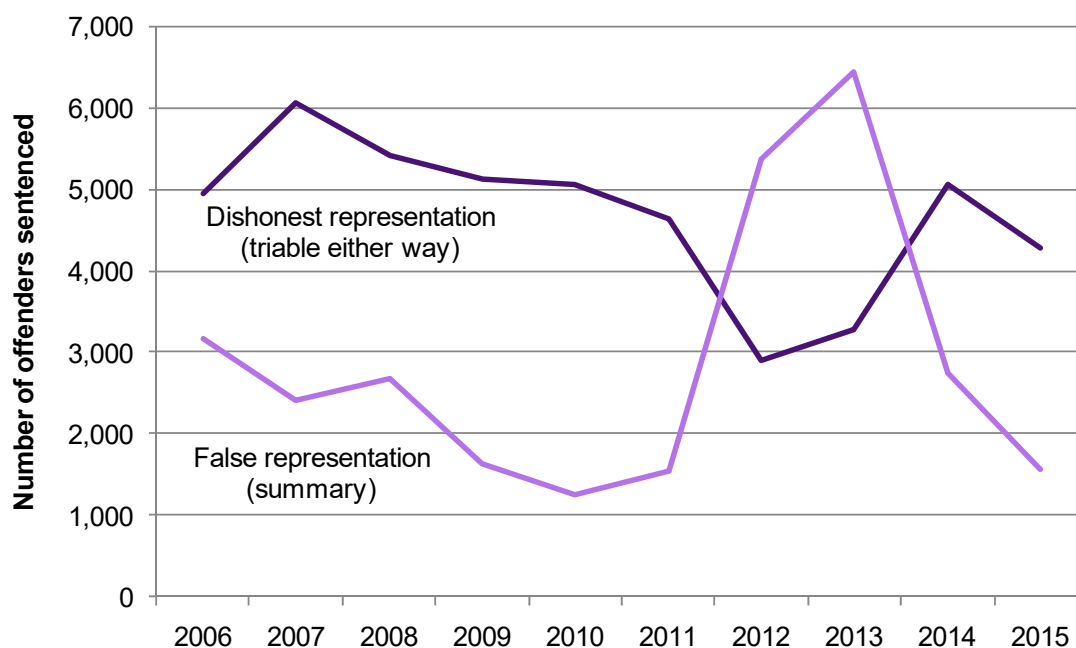
Two offences included within the guideline can be identified specifically as benefit fraud within the data, as they are covered by specific legislation and so recorded separately: dishonest representations for obtaining benefits²⁹, a triable either way offence with a maximum custodial sentence of seven years in custody, and false representations for obtaining benefits³⁰, a summary offence with a maximum sentence of a level five fine or three months in custody. Figure 6 shows the trends in the number of offenders sentenced for these offences from 2006 to 2015.

²⁸ The CPD data covering this offence includes an additional section (section 68), plus some other offences with different maximum sentences. It is likely that the offences covered by the guideline make up the majority of these, but figures should be treated with caution.

²⁹ Section 111A Social Security Administration Act 1992: Dishonest representations to obtain benefit etc.

³⁰ Section 112 Social Security Administration Act 1992: False representations for obtaining benefit etc.

Figure 6 - Adult offenders sentenced for the highest volume benefit fraud offences, 2006 to 2015



In 2012 and late 2013, prosecution policy for the offences changed, altering which of the two offences would be charged in certain circumstances. This caused the sharp changes in volumes observed during this period: the less serious summary offence was more likely to be charged during this period, and then the more serious triable either way offence was more likely to be charged from late 2013 onwards, with both offences reverting to similar volumes to those seen in 2011.

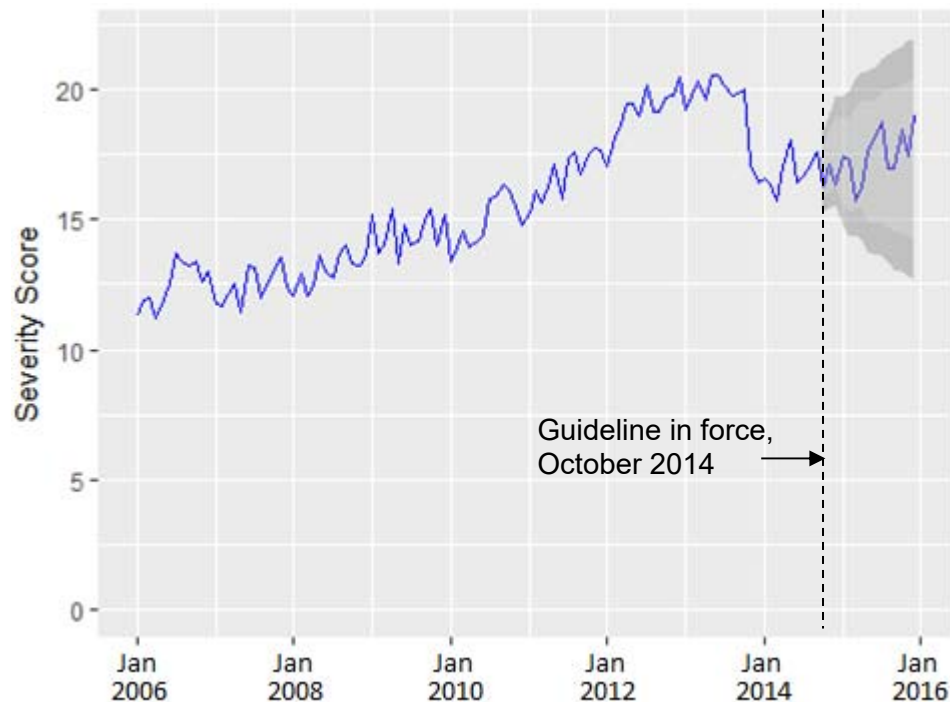
Trends in sentencing outcomes for these two offences are explored in more detail below.

1. Dishonest representations

For the more serious offence of dishonest representations for obtaining benefits, time series analysis indicates that average sentence severity over the period following the introduction of the guideline fell well within the forecasted region of what would be expected (see Figure 7).

Comparing the 12 months of sentencing 'pre-guideline' with the 12 months 'post' shows a statistically significant decrease in average severity, but this is likely to be because the changes to prosecution policy occurred during part of the 12-month 'pre-guideline' period, making the comparison of the two periods less reliable. From late 2013 onwards, including when the guideline was introduced, severity remained fairly stable, and at a similar level to the level observed before the changes to charging practices (around 2011). This suggests that the statistically significant decrease is not a reliable measure of the impact of the guideline, and that the guideline did not cause any changes to average sentencing.

Figure 7 – Average sentencing severity – Dishonest representations for obtaining benefits, 2006 to 2015



2. *False representations*

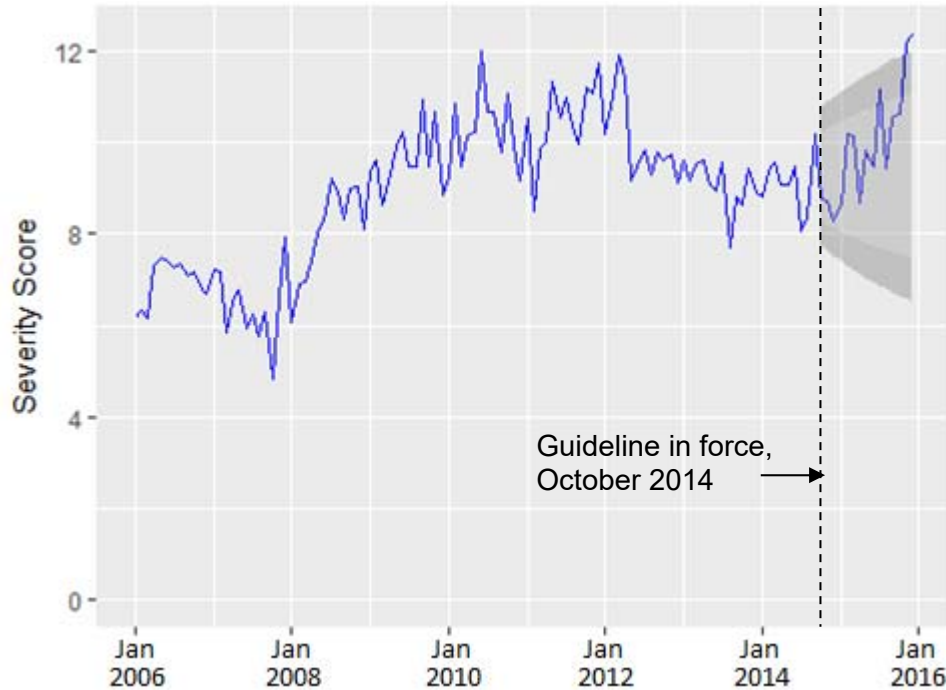
The offence of false representations has the much lower maximum sentence of a level five fine or three months in custody.

The average severity of sentencing grew following the introduction of the guideline and by the end of the period the data clearly crossed the forecasted severity upper boundary (see Figure 8, on the next page). Given the large volume of sentences for this particular offence, this suggests that sentencing severity may have increased beyond what the pre-guideline trend would have been if the guideline had not been introduced. However, it seems that severity did not increase immediately. Up until the middle of 2015, average sentence severity remained at a similar level to where it had been for the previous couple of years, and only in July 2015 did it increase sharply, to the highest point since early 2012. Data for 2016 has since become available and shows that severity decreased again in April 2016, back to a similar level as before the increase and maintained this for the rest of that year. This suggests that the higher severity was only temporary. It is not yet known what caused this increase; it may have been related to the guideline, but there is no clear evidence to suggest this or to explain what aspect of the guideline may have caused this. As the maximum sentence for this offence is only three months in custody or a level five fine, there would have been little impact on the prison population.

Statistical tests comparing data from 12 months 'pre-guideline' with 12 months 'post-guideline' showed no statistically significant difference in sentencing. Overall, this seems to suggest that there were some changes in average sentencing severity

following the guideline's implementation, but these were small in magnitude and were temporary.

Figure 8 – Average sentencing severity – False representations for obtaining benefits, 2006 to 2015



Money laundering

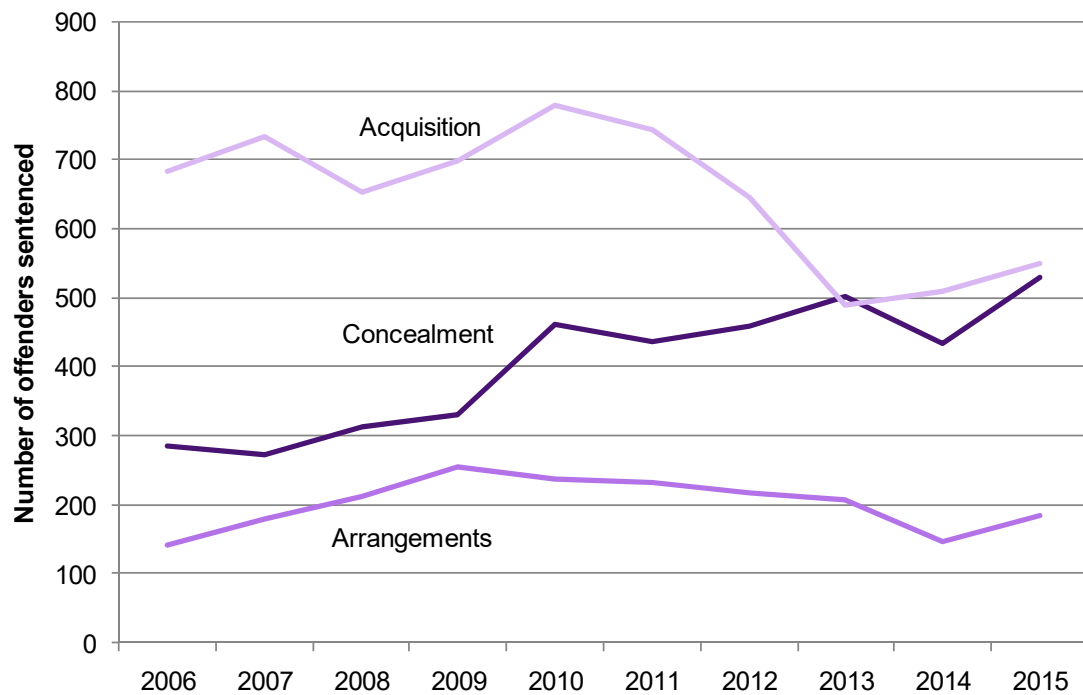
The Money Laundering guideline covers three offences with the same statutory maximum of 14 years' custody. The lowest volume of the three offences (the "arrangements"³¹ offence) showed no clear trend in volumes over the period from 2006 to 2015 (see Figure 9), with 190 offenders sentenced in 2015. The offence of "concealment"³² saw a gradual increase, reaching 530 offenders sentenced in 2015. Volumes for the offence of "acquisition"³³ increased to a peak of 780 offenders sentenced in 2010, but then dropped sharply in 2013, with 550 offenders sentenced in 2015.

³¹ Section 328 Proceeds of Crime Act 2002: Entering into arrangements concerning criminal property.

³² Section 327 Proceeds of Crime Act 2002: Concealing/ disguising/ converting/ transferring/ removing criminal property from England & Wales.

³³ Section 329 Proceeds of Crime Act 2002: Acquisition, use and possession of criminal property.

Figure 9 - Adult offenders sentenced for money laundering offences, 2006 to 2015



For the offences of “concealment” and “arrangements”, time series analysis showed that there was no indication that there was a change in average sentence severity following the introduction of the guideline. A statistical test comparing sentences 12 months before the guideline was in effect with 12 months after also showed that there was no statistically significant difference in average sentencing severity over the period.

Sentencing for the offence of acquisition of criminal property varied widely prior to the introduction of the guideline, so interpretation of the time series analysis is not very meaningful. However, as there was no statistically significant change in average severity, and the analysis for the other two offences covered by the same guideline (“concealment” and “arrangements”, above) also did not show a change in severity, it is not thought that the guideline had an effect on average severity for this offence.

Bribery

There are three offences covered by the Bribery guideline: bribing another person, being bribed, and bribery of foreign public officials, all covered by the Bribery Act 2010. Each of these has a maximum sentence of 10 years’ custody.

The offences of bribing another person and being bribed are both extremely low volume offences, each with fewer than 10 offenders sentenced since the offences came into force in 2010.

Data for bribery of foreign public officials has been found to have data coding issues, and so analysis of sentences for this offence cannot be trusted. However, it seems that this offence is very low in volume.

Due to the low volumes for each of these offences, it has not been possible to carry out any time series analysis.

Sentencing factors

Analysis of CCSS data was carried out for the same offences of fraud and money laundering as covered by the CPD analysis.³⁴ Bribery was not included due to low volumes. Data from January 2013 to the end of September 2014 was used as the 'pre' guideline period and data for October 2014 to the end of March 2015 as the 'post' guideline period.³⁵

When comparing the 'pre' and 'post' periods, there was very little change in the prevalence of the different factors other than what might be expected with a new guideline (e.g. the changed wording of a factor giving it a slightly broader or tighter definition and therefore being used slightly more or less often).

Regression analysis was conducted (separately for the 'pre' and 'post' periods), to look at the influence of factors on sentence outcomes. A model³⁶ was constructed, which took each sentencing outcome in order (discharge, fine, CO, SSO and immediate custody) and modelled the probability of receiving a more serious outcome for each factor.

In the 'pre' guideline model, all of the guideline factors included were statistically significant³⁷. This means that each of these factors have a strong effect on changing the sentencing outcome. Additionally, each guideline factor was found to influence sentencing in the expected direction, i.e. aggravating factors were associated with more severe sentences while mitigating factors reduced the severity of the sentence.

The four factors that stood out the most as a result of their strong effect were: whether the offender committed the offence whilst on bail, whether there was a high level of gain, whether the offender had ten or more previous convictions (as opposed to none), and whether a vulnerable victim was targeted. Holding everything else (including the type of offence) constant, these four factors were each responsible for

³⁴ The analysis was limited, due to inconsistencies in the way offences were coded and low volumes for most offences where a specific offence could be identified. Where analysis has been possible, findings should be treated with caution. Harm factors related to specific monetary values could not be included in the analysis due to issues with identifying which guideline they applied to (this affected interpretation of the data and results would have been misleading). The offences included in this analysis were: Fraud Act 2006 S1 (fraud by false representation, fraud by failing to disclose information and fraud by abuse of position), S6 (possession of articles for use in fraud) and S7 (making or supplying articles for use in fraud); Conspiracy to defraud; Cheat the public revenue; Theft Act 1968 S17 (false accounting); Customs and Excise Management Act 1979 sections 50, 170 and 170B (fraudulent evasion of duty); Social Security Administration Act 1992 S111A (dishonest representations for obtaining benefits) and S112 (false representations for obtaining benefits); and Proceeds of Crime Act 2002 S327 (Concealing/ disguising/ converting/ transferring/ removing criminal property from England & Wales), S328 (Entering into arrangements concerning criminal property) and S329 (Acquisition, use and possession of criminal property).

³⁵ The CCSS ran until the end of March 2015, so data is only available to this date.

³⁶ An ordered logit model was used.

³⁷ Significant at the 5% level.

more than a threefold increase in the probability of receiving a more severe sentence outcome.

In the 'post' guideline model, fewer of the factors were found to have a statistically significant effect on sentence severity. This could be expected as the sample size is approximately five times smaller (as it covers only a six-month period), which makes it more difficult to find patterns in the data. To ensure robust comparisons of the effect of factors, there was a focus on those that were found to be statistically significant in both models. As before, all statistically significant guideline factors pointed in the expected direction. Some remained remarkably stable, for example the effects of an offender having four to nine previous convictions, there being multiple victims, or the offence being out of character, were practically identical.

Noticeable differences were observed for some of the mitigating factors, which in the 'post' guideline analysis had a stronger mitigating effect, e.g. whether the offender lacks maturity, shows remorse, or is a carer. However, potentially counteracting this, there was a stronger effect observed for some of the higher culpability, higher harm and aggravating factors. For example, in the 'post' guideline analysis, the presence of the factors of premeditation, targeting a vulnerable victim and obtaining a high gain each increased the probability of a more severe outcome to a greater degree in the 'post' guideline analysis. However, the time series analysis showed little evidence of any changes in average severity following the introduction of the guideline, so the impact of these factors does not seem to have changed average severity in a noticeable way.

Overall it seems that the factors are influencing sentencing in the way that the Council anticipated, and that there is no evidence of any issues with the guideline, as far as it is possible to perceive from the available data.

Conclusion and next steps

From 2006 to 2015 there was a clear increase in the volume of offenders sentenced for the offences covered by the guideline. Overall, the volume of offenders sentenced almost doubled between 2006 and 2013, although the number then decreased sharply in the following two years.

Over the whole period analysed, there were some notable changes in sentencing practice. For all the offences considered there was a large increase in the percentage receiving SSOs, so that by 2015 more than a quarter received these disposals. This pattern held for almost all types of offences considered, with the exception of low volume offences. This mirrors a trend that has been seen across many offences within the criminal justice system over the same period.³⁸

ACSLs either increased slightly or remained stable, and where they increased, this seemed to be part of an ongoing longer term trend, rather than as a result of the guideline.

³⁸ The increased use of SSOs and decreased use of COs is a trend that has been seen across a wide range of offences in the criminal justice system, and this is discussed in more detail in the Ministry of Justice annual publication, Criminal Justice System Statistics:
<https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2016>.

Time series models and statistical tests were used to evaluate the possible impact of the guidelines on sentencing severity. For most of the offences considered, neither the annual average (comparison of 'pre' and 'post' guidelines) nor the monthly average sentencing severity (data series compared to forecasted severity regions) changed significantly after the introduction of the guidelines. For many of these offences the sample size rendered the monthly time series highly volatile and made it difficult to detect any significant differences.

The analysis for a number of offences does however show evidence of changes in severity, but this does not seem to be a causal effect of the guidelines. Trends in volumes and severity for the benefit fraud offences of dishonest representations and false representations were highly affected by changes in charging practices in the period preceding the introduction of the guideline, and so it seems that the guideline itself did not cause the changes. Of these offences, the summary offence of false representations for obtaining benefits saw a short-term increase in severity towards the very end of the time period (a while after the guideline came into effect). It is not yet known what caused this increase; it may have been related to the guideline, but there is no clear evidence to suggest this or to explain what aspect of the guideline may have caused this. As the maximum sentence for this offence is only three months in custody or a level five fine, there would have been little, if any, impact on the prison population.

The Fraud Act 2006 offence of false representation had significantly higher post-guideline average sentencing severity scores, but as severity had been increasing over time, the increase did not occur immediately on implementation of the guideline and severity stayed within the forecasted severity region, there is no strong evidence to suggest that the guideline caused this increase.

None of these statistically significant findings alone suggest that the guideline had a strong effect on average sentencing severity.

There are no findings to suggest that the guideline caused a change in average sentencing severity. The Council concludes that, based on the evidence available, the guideline is working as expected.

While the analysis indicates that there is no specific need to revisit the guideline, the Council will continue to be alert to any changes (such as new legislation) that may affect whether the guideline remains fit-for-purpose.

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