

Final Resource Assessment

General guideline and Expanded explanations in sentencing guidelines

Introduction

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

Rationale and objectives

The Sentencing Council has replaced the Sentencing Guidelines Council *Overarching Principles - Seriousness: Definitive Guideline* with the *General Guideline* which provides courts with guidance on sentencing offences for which there is no offence specific guideline and expanded explanations relating to commonly used factors in offence specific guidelines. In this resource assessment the term 'the guideline' will be used when referring to both the *General* guideline and the expanded explanations together.

The guideline aims to achieve consistency in the approach to sentencing for all offences and to ensure that due consideration is given to the factors relating to the offence and the offender that may influence the type and severity of sentence. It will provide sentencers and other court users with useful information relating to commonly used factors in guidelines and also improve transparency for victims, defendants and the wider public. At the same time the Council has changed the wording in some offence guidelines to improve consistency and clarity across guidelines.

Many of the same factors are considered across the *General* guideline and expanded explanations and therefore both aspects of the guideline have been considered in this Resource Assessment.

Scope

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

¹ Coroners and Justice Act 2009 section 127: www.legislation.gov.uk/ukpga/2009/25/section/127

service and youth justice services. Any resource impacts which may fall elsewhere are therefore not included in this assessment.

The *General* guideline and expanded explanations apply to sentencing adults and organisations only, they will not affect the sentencing of children and young people.

Current sentencing practice

In 2018, 1,172,456 offenders were sentenced in adult criminal courts in England and Wales, and of those, 68,356 were sentenced at the Crown Court. Approximately 85 per cent² of offenders sentenced at all courts were sentenced for a principal offence that was covered by an offence specific sentencing guideline that has either already been published/is in force, or is currently in development. The expanded explanations in offence specific sentencing guidelines will apply to these offenders. The *General* guideline covers the remaining 15 per cent of offenders, where the offender is being sentenced for an offence for which there is no offence specific guideline.

The guideline will be applicable to the sentencing of all adult offenders, and therefore it is important that their implications are explored.

It is generally not possible to identify within the MoJ Court Proceedings Database (one of the main sources of data on sentencing practice) whether the factors included in this guideline have been taken into account in sentencing. Instead, the analysis for this resource assessment has mainly focussed on data collected by the Sentencing Council, from the Crown Court Sentencing Survey (CCSS)³ and other data collections, for example data collected for the assessment of the Council's *Robbery* guideline during 2016/17. These have permitted an analysis of the frequency of use of certain factors as well as their impact on sentencing severity (derived from separate assessments of the impact of guidelines on specific offences).⁴ This assessment has also considered findings from consultation stage research for the *General* guideline⁵, and responses to consultation for both parts of the guideline.

Key assumptions

To estimate the resource effect of changes to guidelines, an assessment is required of how the changes will affect aggregate sentencing behaviour. This assessment is

² This is an approximate figure based on the data available, rounded to the nearest five percent. This includes all Sentencing Council offence specific guidelines, plus guidance issued by the Sentencing Council (e.g. for sentencing drug driving offences), murder (for which sentencing is set out in statute) and magistrates' court fine and discharge guidance produced by the Sentencing Guidelines Council but which has been adopted by the Sentencing Council (which can be seen here: <https://www.sentencingcouncil.org.uk/offences/magistrates-court/item/offences-appropriate-for-imposition-of-fine-or-discharge/>). Other offences covered by Sentencing Guidelines Council guidelines that have not yet been replaced by SC guidelines have not been included, but these are low volume relative to those that have been covered and so are unlikely to affect the proportion.

³ From 1st October 2010 to 31st March 2015 the Council conducted the Crown Court Sentencing Survey (CCSS) which collected data on sentencing practice in the Crown Court.

⁴ This report considers findings from the guideline assessments on burglary, fraud, money laundering and bribery, sexual offences, robbery and theft. The full guideline assessment reports can be found here: <https://www.sentencingcouncil.org.uk/?s&cat=guideline-assessment>

⁵ Research into the *General* guideline was carried out with 22 sentencers: 15 magistrates and 7 district judges.

based on the objectives of the changes, and draws upon analytical work undertaken during development of the guideline. However, the assessment is heavily dependent on a number of assumptions, 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 guideline are therefore subject to a large degree of uncertainty.

The resource impact of a new guideline is usually measured in terms of the change in sentencing practice that is expected to occur as a result of it. For this to be possible in this case, a detailed understanding of how offences for which there is no offence specific guideline are sentenced is required, as well as an understanding of how the factors covered by the expanded explanations are currently being interpreted in sentencing. In developing this guideline an understanding of current practice has been formed by considering Court of Appeal judgments, evidence from Sentencing Council research with sentencers and the experience of Council members. Analysis of data on the factors covered by the guideline has been reviewed and findings from this work have been used to estimate the impact of the guideline on sentencing practice.

It remains difficult to estimate with any precision the impact the guideline may have on prison and probation resources. Even with information on the use of certain factors in sentencing, this does not enable us to measure the extent to which Court of Appeal judgments and best practice are currently already being taken into account in sentencing, and whether this differs from the information contained within the guideline. Therefore, during the consultation process views were sought regarding the potential impact of the expanded explanations. Findings from consultation stage research on the *General* guideline were also considered in the development of the final guideline.

Resource impacts

This section should be read in conjunction with the definitive *General* guideline and Expanded explanations in sentencing guidelines available at:

<https://www.sentencingcouncil.org.uk/>

The *General* guideline and expanded explanations in sentencing guidelines contain guidance on the application of factors to sentencing. The *General* guideline is applicable to approximately 15 per cent of offenders sentenced each year, where there is currently no offence specific guideline. The expanded explanations in sentencing guidelines have the potential to affect the remainder of sentences, but as the explanations relate to factors at step two of guidelines – after the starting point has been determined – the potential impact is limited.

The guideline is designed to reflect current best practice rather than to alter sentencing practice. In some cases the explanations provide links to or extracts from existing overarching guidelines.

The aim is to improve consistency and transparency in sentencing, but if sentencers are not currently following best practice then it is possible that the guideline could lead to an increase or decrease in individual sentences.

This resource assessment focuses on those areas that have been identified as having the potential to have an impact because the guideline is designed to alter sentencing practice and/or because it will apply to a large number of cases, or where these factors have been identified by respondents to the consultation as potentially having an impact on sentences:

- The wording of step one of the *General* guideline around reaching a provisional sentence;
- changes to the wording of culpability B factors in three specific guidelines (robbery, theft and fraud); and
- eight aggravating and mitigating guideline factors where the provision of further information could impact on their use.

Step one of the General guideline

Step one of the *General* guideline sets out that where there is no offence specific guideline for the offence being sentenced, the court should take into account the statutory maximum sentence, case law and sentencing guidelines for analogous offences, where they apply. Step one also directs sentencers to have regard to the five purposes of sentencing.

The *General* guideline will apply to a large number (around 15 per cent) of offenders sentenced each year, and step one of any guideline will likely have the biggest impact on sentences. Therefore any changes to how harm and culpability are assessed have the potential to have an impact on sentencing severity. However, the guideline approach to sentencing is believed to be in line with how cases are currently sentenced where there is no offence specific guideline. In addition, the previous SGC *Seriousness* guideline set out the approach to sentencing offences, and included many of the same principles as in the *General* guideline, such as information on the five purposes of sentencing. Therefore step one of the *General* guideline is not anticipated to have an impact on prison or probation resources.

Culpability B in the robbery, theft and fraud guidelines

As consulted on as part of the expanded explanations, the Council has changed one of the factors in category B culpability for theft, robbery and fraud offences. This change amends the wording of the medium culpability (B) factor in these guidelines which was previously defined by the absence of high or low culpability factors. Typically, the factor was worded as: *'Other cases where characteristics for A or C are not present.'*

Feedback from research with sentencers had been that they found the previous wording of the factor unhelpful and in some cases sentencers were reluctant to make a finding based on the absence of factors. The changes to this factor are aimed to give a fuller explanation of what the Council intended the factor to cover and to make the wording more consistent across guidelines (later guidelines use the amended wording). The culpability factor therefore now reads:

Other cases that fall between categories A or C because:

- *Factors are present in A and C which balance each other out **and/or***
- *The offender's culpability falls between the factors as described in A and C*

The change was widely welcomed by respondents to the expanded explanations consultation and a small number of respondents specifically commented on the potential effect of this change on sentencing practice. One respondent felt that this change would result in greater consistency in sentencing, with another view that the changes could have a material impact on sentencing due to the high volume of these offences and their nature. Finally, one respondent felt that there might be a move to the middle category of culpability, perhaps with more of a shift from the lowest category.

Table 1 shows the proportion of offenders placed into each level of culpability for theft, robbery and fraud offences.⁶ The table shows that for theft from a shop or stall (data collected from magistrates' courts), the majority (59 per cent) of offenders fell into the lowest level of culpability (category C), while a small proportion (10 per cent) fell into the highest category. For street and less sophisticated commercial robbery, and fraud, bribery and money laundering (data collected from the Crown Court), offenders most frequently fell into either the highest or middle culpability categories.

Table 1: Proportion of data collection forms falling into each category of culpability, where the culpability category was known, for specific Theft (2016)⁷, Robbery (2016/17)⁸ and Fraud offences (2014/15)⁹

Offence type	Culpability A	Culpability B	Culpability C
<i>Theft offences (2016)</i>			
Theft from a shop or stall	10%	31%	59%
<i>Robbery (2016/17)</i>			
Street and less sophisticated commercial robbery	40%	42%	18%
<i>Fraud offences (2014/15)</i>			
Fraud, bribery and money laundering	50%	40%	10%

⁶ Fraud, bribery and money laundering offences. The fraud analysis should be treated with caution, because data on precise culpability levels was not collected on the CCSS forms, and therefore assumptions have been made about which level of culpability the offender fell into, based on the culpability factors ticked on the CCSS form. Due to these data quality issues, the results are approximate and have been rounded to the nearest 10 per cent.

⁷ Between 19 September and 16 December 2016 the Council conducted a survey which collected data on sentencing practice for the offence of theft from a shop or stall in magistrates' courts.

⁸ Between 1 November 2016 and 28 April 2017 the Council conducted a survey which collected data on sentencing practice for robbery offences in the Crown Court.

⁹ Taken from the CCSS data for these offences, 1 October 2014 to 31 March 2015.

The change in wording for these three guidelines (discussed above) should encourage sentencers to balance culpability A factors with culpability C factors and thereby to place more offenders in culpability B.

For those offences where a high proportion of offenders currently fall into culpability A (robbery and fraud), it is therefore possible that a small number of these offenders could be placed into culpability B instead under the guideline. At the same time, there are some key factors causing some offenders definitely to fall into culpability A (for example, for the offence of robbery, the production of a firearm or bladed article places the offender in culpability A), and the categorisation for many of these individuals is not expected to change. Overall, therefore, there is the potential that the change could lead to a small decrease in overall sentencing severity for robbery and fraud offences. However, given the limited data available in this area, it is not possible to estimate the number of offenders who might be affected, or how sentence lengths may be impacted. The proportion of offenders placed into culpability C for these guidelines is currently low, and is not expected to change under the guideline, although if a small number of these offenders were placed into culpability B then the impact on sentencing severity would be minimal due to the small number of cases involved.

In contrast, for theft offences, a large proportion of offenders already fall into either culpability B or C. One consultation respondent commented that it is possible that there could be a shift away from the use of lower culpability. However, the high use of the categories is likely to be because more specific factors are provided in culpability B and C in the theft guideline and therefore less reliance would be placed on the 'balancing' factor in culpability B. As a result, this change in wording is not anticipated to change the proportion falling into category B for this offence.

Aggravating and mitigating factors

Previous convictions

The following statutory aggravating factor appears at step two of all Sentencing Council offence specific guidelines, and the *General* guideline:

Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction

Analysis of data from the CCSS¹⁰ found that, in 2014, around 49 per cent of offenders sentenced at the Crown Court had at least one previous conviction taken into account: 26 per cent had 1 to 3 previous convictions taken into account, 13 per cent had 4 to 9, and 10 per cent had 10 or more. However, these proportions varied depending on the offence.¹¹

¹⁰ Crown Court Sentencing Survey Annual Publication, January to December 2014 - <https://www.sentencingcouncil.org.uk/wp-content/uploads/CCSS-Annual-2014.pdf>. See page 6 for more information on previous convictions. Data on previous convictions for offenders sentenced for offences causing death were recorded on a different basis and so have not been included in the overall proportions quoted here.

¹¹ The likelihood that an offender has previous convictions that are recent and relevant enough to be taken into account depends on the type of offence they are being sentenced for. The 2014 CCSS data showed that offenders sentenced for burglary, robbery and driving offences are more likely to have recent and relevant previous convictions that influence their sentence, whereas offenders sentenced for sexual offences are much less likely to have previous convictions that are recent and relevant enough to be taken into account.

Where an offender does have recent and relevant previous convictions, that offender is more likely to be sentenced to immediate custody, with this likelihood increasing as the number of previous convictions increases.¹²

Further statistics on previous convictions can be found in the Sentencing Council's Crown Court Sentencing Survey publication at the following link:

<https://www.sentencingcouncil.org.uk/wp-content/uploads/CCSS-Annual-2014.pdf>

The expanded explanation sets out the statutory provisions (section 143 of the Criminal Justice Act 2003) and gives detailed guidance on how previous convictions should be taken into account. Some of these relate to potentially increasing a sentence (e.g. crossing the community or custody threshold when the offence would otherwise not normally warrant this), whilst others relate to potentially decreasing a sentence or changing a disposal (e.g. where addressing an underlying problem may be more effective with a sentence served in the community). However, the expanded explanation here represents current best practice and is not designed to alter sentencing practice, and therefore the guideline is not expected to change sentencing severity for this factor.

Age and lack of maturity

Consideration of age and/or lack of maturity appears as a mitigating factor at step two of almost all Sentencing Council guidelines including the *General* guideline. The explanation draws on recent case law¹³ and neurological and psychological research to provide brief but comprehensive guidance on the particular considerations that may be relevant to the sentencing of young adults.

In magistrates' courts, around 20 per cent of adult offenders sentenced in 2018 were aged 18-25 (inclusive), and around 18 per cent of adult offenders sentenced to immediate custody were in this age group. In the Crown Court the figures were 30 per cent and 29 per cent respectively.¹⁴

Table 2 shows the frequency of use of the mitigating factors 'Age' and 'Age or lack of maturity affecting responsibility' from the CCSS data in 2014. The table shows that 'age' is typically cited as a mitigating factor more frequently than the mitigating factor 'Age or lack of maturity affecting responsibility.'

In general, the proportion of offenders aged 18-24 in the CCSS was higher than the proportion of offenders who had a mitigating factor around age or lack of maturity taken into account in sentencing, as might be expected.¹⁵

¹² See page 33 of the CCSS 2014 report, linked above.

¹³ R v Clarke [2018] EWCA Crim 185

¹⁴ Source: Court Proceedings Database (CPD). These calculations do not include cases where the date of birth of the adult was unknown. Data validations applied to the dataset mean that if there is an apparent anomaly in a defendant's age, records may automatically be assigned a default age of 25 for an adult, meaning that this age is overcounted.

¹⁵ The age band 18-24 was taken for this analysis, because this breakdown is readily available from the CCSS data.

Table 2: Frequency of use of factors around age and lack of maturity in sentencing, CCSS 2014

Offence type	Frequency of use of factor in the CCSS	Proportion of offenders in the CCSS aged 18-24
<i>Mitigating factor on the CCSS form: Age</i>		
Arson and Criminal Damage	22%	31%
Offences Causing Death	28%	27%
Driving offences	26%	40%
Other offences	20%	26%
Robbery and Assault with intent to Rob	30%	50%
Theft offences	21%	18%
<i>Mitigating factor on the CCSS form: Age/lack of maturity affecting responsibility</i>		
Assault and Public Order	7%	36%
Burglary offences	6%	33%
Drug offences	8%	32%
Fraud, Bribery and Money Laundering offences ¹⁶	8%	13%
Indecent Photographs of Children ¹⁷	14%	11%
Sexual offences ¹⁸	15%	20%

¹⁶ The figure for fraud, bribery and money laundering offences covers offenders sentenced between 1 October 2014 and 31 December 2014, as the Sentencing Council's Fraud, Bribery and Money Laundering guideline came into force on 1 October 2014 and so the CCSS form was changed to reflect the new guideline. Prior to 1 October 2014, these offences were captured on the Theft offences form (for which the full title was 'Theft, dishonesty and fraud offences').

¹⁷ For offences related to indecent photographs of children, the proportion of offenders with the factor 'age/lack of maturity affecting responsibility' cited is greater than the proportion of offenders aged 18-24. There are several possible reasons for this: the proportion of 18 to 24-year-olds does not include those aged 25, who technically also fall under the new expanded explanation, and the proportion may also not include all of those who are considered to have a lack of maturity affecting responsibility. It also does not include older offenders, for whom this factor may be relevant.

¹⁸ This covers sexual offences sentenced between 1 April 2014 and 31 December 2014. The period from 1 January 2014 to 31 March 2014 is not included, because in April 2014 the Sentencing Council's Sexual Offences guideline came into force, and the CCSS form was changed to reflect the new guideline. The period before the guideline came into force is therefore not comparable to the newer data, and has not been included in this analysis for this table, or the subsequent tables in the main part of this report.

Looking at analysis undertaken as part of previous guideline assessments, it was found that for most offences, as would be expected, mitigating factors around age were generally associated with a decrease in sentencing severity. This analysis is summarised in Table 1 in the Annex.

The statistics set out earlier show that age and lack of maturity is already being taken into account as a factor in sentencing, and where it has been possible to assess, is associated with a statistically significant decrease in sentencing. As noted above the expanded explanation is based on case law and therefore it is possible that much of the guidance is already being considered by courts. However, one respondent to the consultation took the view that the case law had not yet filtered through to all courts, and therefore it is possible that the explanation could lead to a decrease in some sentences.

In addition, two other areas have been identified where there is the potential for the guideline to lead to further decreases in sentencing for adults aged 18 to 25.

Firstly, the expanded explanation clarifies that this mitigating factor will typically apply to offenders aged 18 to 25. It is possible that at present sentencers are not always considering the relevance of this factor for offenders towards the top of this age range. Therefore there could be an increase in the use of this mitigating factor in these cases.

Secondly, for those offences where it was found that the presence of the factor did not appear to have a significant impact on sentencing severity, there is the potential that the detailed guidance in the expanded explanation may lead to a change in the way that this factor is applied, and result in a decrease in sentencing severity in some cases. However, given the limited data available in this area, it is not possible to estimate the number of offenders who might be affected, or how sentence lengths may be impacted.

In terms of older offenders, the expanded explanation refers to 'young adults (typically aged 18-25)', but it is likely that in some cases the mitigating factors 'Age'¹⁹ and 'Age or lack of maturity' have in the past been taken into account for older age groups.

There has been recent case law on the sentencing of elderly and/or physically disabled offenders.²⁰ Many guidelines contain the factor 'Serious medical conditions requiring urgent, intensive or long-term treatment' which may apply to elderly offenders and the expanded explanations include detailed guidance which reflects the recent case law for such cases. It is therefore not anticipated that the expanded explanation for 'Age or lack of maturity' will have any impact on the severity of sentencing of older offenders.

¹⁹ The factor 'Age' does not appear in any Sentencing Council guidelines

²⁰ For example, [R v Clarke](#); [R v Cooper \[2017\] 1 WLR 3851](#), [\[2017\] 2 Cr App R \(S\) 18](#).

Location and timing

Guideline factors around the location and timing of the offence are included at step 2 in some offence specific guidelines, and the factor 'Location and timing of the offence' is also included as an aggravating factor in the *General* guideline.

Table 3 shows the frequency of use of guideline factors related to this factor in the 2014 CCSS data and 2016/17 Robbery data collection. Not all CCSS forms included these factors, and therefore the table only includes statistics on offences for which the factors were included on the CCSS forms.

The table suggests that the factors 'Location' and 'Timing' are taken into account frequently in sentencing.²¹

Table 3: Frequency of use of factors around location and timing in sentencing, CCSS 2014 and Robbery data collection 2016/17

Offence type	Proportion of forms with a factor around location ticked	Proportion of forms with a factor around timing ticked
<i>Factors on the CCSS form: Location and Timing</i>		
Assault and public order	42%	25%
<i>Factors on the CCSS form: Location of the offence and Timing of the offence</i>		
Sexual offences	20%	10%
<i>Factors on the robbery data collection form: Location and Timing</i>		
Robbery	40%	34%

The analysis for the relevant guideline assessments found that for the offences considered, guideline factors around location and timing did not appear to have a statistically significant impact on sentencing severity. This analysis is summarised in Table 2 of the Annex.

The expanded explanations provide guidance on the applicability of these factors and caution against applying them unless they indicate increased harm or culpability not already taken into account. They set out a number of instances where these factors may make an offence more serious; for example if the offence was committed in a place in which there is a particular need for discipline or safety such as a prison, court, school or hospital.

As it has been shown that the factors 'Location' and 'Timing' are currently used frequently in sentencing but do not have a significant impact on average sentencing severity, it is possible that the expanded explanations may reduce the use of these

²¹ The factor 'Committed at night' (related to the timing of the offence) was included for Burglary, and this was ticked on around 28 per cent of forms. The specific factor of 'Location of premises' in the Drug Offences guideline was not a frequently used factor – it was ticked on around 1 per cent of forms in 2014 (although this factor should only be relevant for the relatively low volume offence of 'permitting premises to be used').

factors in sentencing, by focusing on a narrower range of circumstances where they are applicable. However, for the expected smaller proportion of cases where these factors would be applicable under the guideline, for example where the offence was committed in a prison, court, school or hospital, it is possible that their presence in a case may have a significant impact on sentences. Overall these expanded explanations are not expected to have an impact on average sentencing severity, because it is expected that sentences for offences committed in these circumstances are already aggravated to take this into account, although it has not been possible to test this assumption because it is not possible to identify such cases from the available data.

Offender under the influence of drugs or alcohol

The Council's intention in providing an expanded explanation for this factor, and including it in the *General* guideline, is to make it clear firstly, that the factor is only relevant where the intoxication is voluntary and has contributed to the offending (which could reduce the use of the factor to aggravate), and secondly, that the factor is applicable even where the offender has acted out of character as a result of being intoxicated (which could increase the use of the factor to aggravate).

Table 4 shows the frequency of use of this factor from the CCSS data in 2014. The table shows that it is typically cited fairly frequently in sentencing, most frequently for Arson and Criminal Damage, Driving, Robbery and Assault and Public Order offences. The factor is not frequently cited for Theft offences, Sexual offences and Other offences.

Table 4: Frequency of use of the factor 'Offender was under the influence of alcohol/drugs' in sentencing, CCSS 2014

Offence type	Frequency of use of factor in the CCSS
Arson and Criminal Damage	27%
Driving offences	26%
Other offences ^{22,23}	6%
Robbery and Assault with intent to Rob	26%
Theft offences	4%
Assault and Public Order	23%
Burglary offences	16%
Sexual offences	8%

²² The factor on the CCSS form was 'Use of drugs, alcohol or another substance to facilitate the offence.'

²³ 'Other offences' covers a wide range of offences, including possession of offensive weapons, breach of a protective order, perverting the course of justice, possession/distribution of prohibited weapons or ammunition and other offences.

The previous guideline assessments have mainly covered offences where the use of this factor was low, and so for these offences, detailed analysis on the impact of this factor has not been carried out. However, as this factor was cited more frequently for Robbery offences, the Robbery guideline assessment included some analysis on this factor's impact on sentencing. For the offence of street or less sophisticated commercial robbery, the factor 'Offender under influence of alcohol/drugs' did not appear to have a statistically significant impact on average sentence lengths.²⁴

Overall, it is not anticipated that providing an expanded explanation for this factor will have an impact on average sentences – this is largely because the explanation does not introduce any new considerations, rather it reflects best practice.

However, if it is the case that in some circumstances best practice is not currently being followed then it is possible that the explanation could cause a change to some sentences; given the full explanation provided for this factor, this could be in either direction (either to increase or decrease sentences). Again, it has not been possible to estimate how sentencing severity might be affected by any change, given the limited data about how this factor is currently being applied (but from the limited evidence available – for robbery offences – it seems that the application of this factor may not have a statistically significant impact on sentence lengths).

Determination and /or demonstration of steps having been taken to address addiction or offending behaviour

Some offence specific guidelines include a step 2 mitigating factor around the determination/ demonstration of steps being taken to address addiction or offending behaviour. This factor is also included in the General guideline and has an expanded explanation.

The Council's intention in including this factor has been to ensure that where an offender is taking steps to address the issues underlying their offending, this is reflected in the sentence.

Table 5 shows the frequency of use of this factor from the CCSS data in 2014. The table shows that it is sometimes cited in sentencing, most frequently for Arson and Criminal Damage and Drug offences. The factor is not frequently cited for Fraud, Bribery and Money Laundering offences.

²⁴ It should be noted that as robbery offences predominantly attract custodial sentences, only the impact on average custodial sentence lengths are examined. However, for other offences, there may be impacts on, for example, the shift from a non-custodial to custodial sentence.

Table 5: Frequency of use of factors around determination to address needs / addiction / behaviour, CCSS 2014

Offence type	Frequency of use of factor in the CCSS
<i>Factor on the CCSS form: Offender can/is addressing needs/addiction</i>	
Arson and Criminal Damage	14%
Driving offences	8%
Other offences ²⁵	8%
Robbery and Assault with intent to Rob	9%
Theft offences	8%
<i>Factor on the CCSS form: Determination/demonstration to address addiction/behaviour</i>	
Assault and Public Order	8%
Burglary offences	9%
Drug offences	13%
Fraud, Bribery and Money Laundering offences ²⁶	3%
Sexual offences	6%

The analysis for the relevant guideline assessments found that for domestic and non-domestic burglary offences, the factor was associated with a statistically significant decrease in sentencing severity. For Street/Less Sophisticated Commercial Robbery, Fraud and Money Laundering offences and Theft from a shop or stall, the guideline factor did not appear to have a statistically significant impact on sentencing severity. This analysis is summarised in Table 3 of the Annex.

However, the fact that the expanded explanation for this factor emphasises that a sentence that focusses on rehabilitation may be justified where this factor applies, and encourages the court to obtain a Pre-Sentence Report, may lead to a small

²⁵ 'Other offences' covers a wide range of offences, including possession of offensive weapons, breach of a protective order, perverting the course of justice, possession/distribution of prohibited weapons or ammunition and other offences.

²⁶ The figure for fraud, bribery and money laundering offences covers offenders sentenced between 1 October 2014 and 31 December 2014, as the Sentencing Council's Fraud, Bribery and Money Laundering guideline came into force on 1 October 2014 and so the CCSS form was changed to reflect the new guideline. Prior to 1 October 2014, these offences were captured on the Theft offences form (for which the full title was 'Theft, dishonesty and fraud offences').

number of cases resulting in a non-custodial rather than a custodial sentence. This is not considered to be a change, rather reflecting best practice.

Victim vulnerability

Tables 6 and 7 show the frequency of use of guideline factors around victim vulnerability in the 2014 CCSS data. Not all CCSS forms included these specific factors, and therefore the table only includes statistics on offences for which factors around 'Victim is particularly vulnerable' and targeting of vulnerable victims were included on the CCSS forms.²⁷

The tables suggest that factors around victim vulnerability are taken into account fairly frequently in sentencing, especially for the offence of robbery where around half of the cases in the CCSS had the factor 'Targeting of vulnerable victim(s)' taken into account in sentencing.

Table 6: Frequency of use of the factors 'Victim is particularly vulnerable', CCSS 2014

Offence type	Frequency of use of factor in the CCSS
Arson and Criminal Damage	7%
Offences Causing Death	21%
Other offences	11%
Theft offences	8%
Assault and Public Order (harm factor)	13%
Sexual offences (harm factor 'Victim is particularly vulnerable due to personal circumstances')	18%
Fraud offences (harm factor) ²⁸	3%

²⁷ In addition, on some of the CCSS forms the factors around vulnerability were only applicable to certain offences on the form, for example, the factor 'Specific targeting of vulnerable victim/child under 13 years' in the sexual offences CCSS form was only applicable to offences where the victim was under 13 years. Therefore, the tables do not include proportions on the number of times these factors were used in sentencing, because they only apply to a subset of the total offences included on the form.

²⁸ The factors related to targeting vulnerable victims and the victim being particularly vulnerable only appear in some of the guidelines within the Fraud, Bribery and Money Laundering guideline, and so the low proportion stated here may be related to the factor only being relevant for some of the cases. In the CCSS data, it was not possible accurately to determine which guideline was used to sentence offenders so all offences were grouped together for the analysis. Also, the factor on the CCSS form for these offences was 'Specific targeting of vulnerable victim'. However, in the guideline the wording is slightly different: in the 'Fraud' guideline it is worded as 'Deliberately targeting victim on basis of vulnerability' and in the 'Possessing, making or supplying articles for use in fraud' guideline it is worded as 'Articles deliberately designed to target victims on basis of vulnerability'. There were no cases of bribery or corporate offenders included in the analysis.

Table 7: Frequency of use of factors around the targeting of vulnerable victims, CCSS 2014

Offence type	Frequency of use of factor in the CCSS
<i>Targeting of vulnerable victim(s)</i>	
Assault and Public Order	7%
Robbery and Assault with intent to Rob	46%
Theft	11%
<i>Culpability factor: Specific targeting of vulnerable victim²⁸</i>	
Fraud	6%

As part of the assessments for the robbery, sexual offences and fraud guidelines, analysis of the impact of factors related to victim vulnerability was carried out. For robbery and most sexual offences included in the analysis, this analysis found that factors around victim vulnerability did not appear to have a statistically significant impact on sentencing severity. However, for rape offences the factor 'Victim is particularly vulnerable' and for fraud offences²⁸, the factors 'Specific targeting of vulnerable victim' and 'Victim particularly vulnerable' were associated with statistically significant increases to sentencing. This analysis is summarised in Tables 4 and 5 of the Annex.

One reason for these factors not always having a statistically significant impact on the sentence could be that victim vulnerability is intrinsic to many of these offences and so is already taken into account by the sentencer through the application of other factors at step 1. The explanation includes a reminder not to double count factors and so it is not anticipated that this position will change.

The expanded explanation for this factor (which is included in the *General* guideline) draws on case law to provide balanced guidance on where vulnerability may be relevant. The explanation makes it clear that it is for the court in each case to weigh up the impact of victim vulnerability on the sentence.

Therefore, it is not anticipated that the explanation will have any impact on prison and probation resources.

Offence committed in custody

The *General* guideline includes guidance on the aggravating factor 'Offence committed in custody.' The explanation states that offences committed in custody are more serious and will usually be consecutive to the sentence being served, although if the factor is already inherent in the offence or has been considered in assessing harm and culpability then it should not be double counted.

One consultation respondent suggested that this guideline factor will ensure that such offences are treated more seriously than would otherwise be the case.

Many offences committed in custody will be dealt with by the Prison Adjudication System²⁹, although some, mainly more serious offences, will be dealt with by the police and therefore fall to be sentenced under the guidelines.

The explanation that sentences for such offences will usually be consecutive to any sentence being served includes reference to the *Totality guideline* which is already in force, and therefore this is not expected to have an effect on average sentencing severity. It is assumed that offences committed in custody are already treated more seriously than would otherwise be the case and therefore it is anticipated that the guideline is a reflection of current sentencing practice and would not have an impact on prison or probation resources.

Risks

In attempting to estimate the likely resource impacts of some of these guidelines, there are two main risks to consider:

Risk 1: The Council's assessment of current sentencing practice is inaccurate

An important input into developing sentencing guidelines or guidance is an assessment of current sentencing practice. The Council uses this assessment as a basis to consider whether current sentencing approaches 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 or guidance comes into effect.

This risk is mitigated by information that is gathered by the Council as part of the development and consultation phase. As outlined above, however, the data to support this guideline is limited in some areas. The Council therefore included a question in the expanded explanations consultation document, asking for consultees' views on the potential impact of the proposals, which have been used to inform the final resource assessment.

Risk 2: Sentencers do not interpret or apply the factors as intended

If sentencers do not interpret the guideline as intended, this could cause a change in the average severity of sentencing, with associated resource effects.

The Council takes a number of precautions when issuing a new guideline or guidance to try to ensure that sentencers interpret it as intended. The wording of the guideline factors and expanded explanations has been developed by drawing on an understanding of current practice which has been formed by considering Court of Appeal judgments, evidence from Sentencing Council research with sentencers, consultation responses and the experience of Council members. The expanded

²⁹ <https://www.justice.gov.uk/downloads/offenders/psipso/psi-2018/psi-05-2018-prisoner-discipline-procedures-adjudications.pdf>

explanations embed additional information into the General guideline and existing guidelines and modifications have been made in some offence specific guidelines in order to improve consistency and clarity across guidelines, thereby potentially reducing the risk of sentencers misinterpreting the factors or using them in a way that was not intended.

Annex: Impact of guideline factors on sentencing

This Annex contains summary tables of the impact of various guideline factors on sentencing. These summaries are based on findings from the guideline assessments that have been conducted.

Due to the large number of factors in each guideline, not all guideline factors are included in each assessment. Therefore, the analysis is only available for factors which were present in a certain proportion of cases (typically where a factor was present in more than five per cent of cases).

Table 1: Impact of the mitigating factor ‘Age or lack of maturity affecting responsibility’ on sentencing, for offences where this was considered as part of the guideline assessment

Offence type	Impact of the factor
<i>Burglary offences (2012-2014)</i>	
Domestic Burglary	Associated with a statistically significant decrease to sentencing severity
<i>Sexual offences (2014/15)</i>	
Rape	Associated with a statistically significant decrease to sentencing severity
Rape of a child under 13	Associated with a statistically significant decrease to sentencing severity
Sexual Assault	Did not appear to have a statistically significant impact on sentencing severity
Sexual Assault of a child under 13	Did not appear to have a statistically significant impact on sentencing severity
Sexual Activity with a child	Did not appear to have a statistically significant impact on sentencing severity
<i>Fraud, bribery and money laundering offences (2014/15)</i>	
All offences grouped together for analysis	Associated with a statistically significant decrease in the probability of receiving a more severe sentence
<i>Robbery offences (2016/17, mitigating factor ‘Age or lack of maturity’)</i>	
Street or Less Sophisticated Commercial Robbery	Associated with a statistically significant decrease to sentence lengths

Table 2: Impact of the factors around location and timing on sentencing, for offences where this was considered as part of the guideline assessment

Offence type	Impact of the factor
<i>Burglary offences (2012-2014, factor 'Offence committed at night')</i>	
Domestic Burglary	The factor 'Offence committed at night' did not appear to have a statistically significant impact on sentencing severity
Non-Domestic Burglary	The factor 'Offence committed at night' did not appear to have a statistically significant impact on sentencing severity
<i>Sexual offences (2014/15)</i>	
Rape	The factors 'Location' and 'Timing' did not appear to have a statistically significant impact on sentencing severity
Rape of a child under 13	The factors 'Location' and 'Timing' did not appear to have a statistically significant impact on sentencing severity
Sexual Assault	The factors 'Location' and 'Timing' did not appear to have a statistically significant impact on sentencing severity
Sexual Assault of a child under 13	The factors 'Location' and 'Timing' did not appear to have a statistically significant impact on sentencing severity
Sexual Activity with a child	The factor 'Location' did not appear to have a statistically significant impact on sentencing severity. There were not enough records where 'Timing' was a factor in sentencing, to determine whether this factor had an impact on sentencing severity for this offence.
<i>Robbery (2016/17)</i>	
Street or Less Sophisticated Commercial Robbery	The factors 'Location' and 'Timing' did not appear to have a statistically significant impact on sentence lengths

Table 3: Impact of factors around determination to address needs / addiction / behaviour, for offences where this was considered as part of the guideline assessment

Offence type	Impact of the factor
<i>Robbery offences (2016/17) – guideline mitigating factor ‘Steps taken to address addiction/offending’</i>	
Street or Less Sophisticated Commercial Robbery	Did not appear to have a statistically significant impact on sentence lengths
<i>Burglary offences (2012-2014, factor ‘Determination/demonstration to address addiction/behaviour’)</i>	
Domestic Burglary	Associated with a statistically significant decrease in sentencing severity.
Non-Domestic Burglary	Associated with a statistically significant decrease in sentencing severity
<i>Theft from a shop or stall (2016/17) – guideline factor ‘Determination and / or demonstration of steps having been taken to address addiction or offending behaviour’ (worded on data collection form as ‘Steps to address addiction or offending behaviour’)</i>	
Theft from a shop or stall	Did not appear to have a statistically significant impact on sentencing severity
<i>Fraud, bribery and money laundering offences (2014/15) – guideline factor ‘Determination and/or demonstration of steps having been taken to address addiction or offending behaviour’ (worded on CCSS form as ‘Determination/demonstration to address addiction/behaviour’)</i>	
All offences grouped together for analysis	Did not appear to have a statistically significant impact on the probability of receiving a more severe sentence

Table 4: Impact of the factors ‘Victim particularly vulnerable’ and ‘Victim particularly vulnerable due to personal circumstances’, for offences where this was considered as part of the guideline assessment

Offence type	Impact of the factor
<i>Sexual offences (2014/15) – guideline harm factor ‘Victim particularly vulnerable due to personal circumstances’</i>	
Rape	Associated with a statistically significant increase to sentencing severity
Rape of a child under 13	Did not appear to have a statistically significant impact on sentencing severity
Sexual Assault	Did not appear to have a statistically significant impact on sentencing severity
Sexual Assault of a child under 13	Did not appear to have a statistically significant impact on sentencing severity
Sexual Activity with a child	Did not appear to have a statistically significant impact on sentencing severity
<i>Fraud, bribery and money laundering offences (2014/15, guideline harm factor ‘Victim particularly vulnerable’)</i>	
All offences grouped together for analysis	Associated with a statistically significant increase in the probability of receiving a more severe sentence

Table 5: Impact of factors around targeting of particular victims, for offences where this was considered as part of the guideline assessment

Offence type	Impact of the factor
<i>Robbery offences (2016/17) – guideline aggravating factor ‘Targeting of vulnerable victim’</i>	
Street or Less Sophisticated Commercial Robbery	Did not appear to have a statistically significant impact on sentence lengths
<i>Sexual offences (2014/15) – guideline aggravating factor ‘Specific targeting of vulnerable victim/child under 13 years’</i>	
Rape of a child under 13	Did not appear to have a statistically significant impact on sentencing severity
Sexual Assault of a child under 13	Did not appear to have a statistically significant impact on sentencing severity
Sexual Activity with a child	Did not appear to have a statistically significant impact on sentencing severity
<i>Fraud, bribery and money laundering offences (2014/15) – guideline factor ‘Deliberately targeting victim on basis of vulnerability’ (worded on CCSS form as ‘Specific targeting of vulnerable victim’)</i>	
All offences grouped together for analysis	Associated with a statistically significant increase in the probability of receiving a more severe sentence