

## Review of trend analysis of the Sentencing Council's Imposition of community and custodial sentences guideline

### Introduction

The Sentencing Council was set up in 2010 and produces guidelines for use by all members of the judiciary when sentencing after conviction in criminal cases in England and Wales.

On 1 February 2017, the Council's new [Imposition of community and custodial sentences guideline](#) (hereafter referred to in this paper as 'the Imposition guideline') came into force. The guideline was developed to provide up-to-date and improved guidance on community and custodial sentences and replace the outdated [Sentencing Guidelines Council \(SGC\) guideline](#) - New Sentences: Criminal Justice Act 2003.

In the guideline, the Council sought to set out the general principles around the imposition of a community order (CO) and a custodial sentence, within the context of the sentencing decision. It also intended to clarify the factors which may make it appropriate to suspend a custodial sentence and impose a suspended sentence order (SSO), by highlighting the key principles in this decision to suspend.

The inception of the Imposition guideline began during the development of the Breach guideline. There was concern from the Sentencing Council around an issue where some SSOs were potentially being used as a more severe form of a CO, rather than for offenders whose case had passed the custody threshold and were eligible and suitable for their custodial sentence to be suspended. The Imposition guideline was intended to address this issue and to ensure that the Breach guidelines, once in force, would be used correctly in cases of a breach of CO or breach of SSO.

This review, therefore, seeks to examine, through high level trend analysis, whether the Imposition guideline and subsequent communications to raise awareness of the guideline were successful in clarifying the principles relating to the imposition of community and custodial sentences and, in particular, the factors to consider when deciding whether or not to suspend a custodial sentence. It does not focus on or attempt to analyse the impact of any other elements of the Imposition guideline, such as those relating to pre-sentence reports, CO requirements or CO levels, which were not intended to directly influence sentencing practice.

## Background

### Community orders and custodial sentences

Community orders (CO) are a type of sentence available to sentencers which are wholly served in the community and can combine punishment with rehabilitative and reparative activities, where appropriate. Sentencers must impose at least one out of 14 possible requirements on a CO, including one requirement imposed for the purpose of punishment (as defined by the sentencer) except where the court also imposes a fine or in exceptional circumstances ([s208\(10\) and \(11\) of the Sentencing Code](#)). The number and type of the specific requirements imposed are determined by the seriousness of the offence, suitability of requirements, stated purpose of the sentence, risk of reoffending, ability of the offender to comply and availability of the requirements in the local area. These could include, for example:

- undertaking a specified number of hours of unpaid work
- being subject to a curfew, monitored with electronic monitoring tags
- undertaking a treatment programme for alcohol or drugs
- being subject to a rehabilitation activity requirement (RAR)

[Custodial sentences](#), on the other hand, are reserved for the most serious offences and should only be imposed when the offence committed is “so serious that neither a fine alone nor a community sentence can be justified for the offence” ([s230\(2\) of the Sentencing Code](#)). The length of the sentence will depend on the seriousness of the offence and the maximum penalty for the crime allowed by law. When an offender is given a custodial sentence of between 14 days and 2 years, sentencers may choose to suspend the sentence for up to two years, imposing an SSO instead of an immediate custodial sentence. This means that the offender does not go to prison immediately but instead is given the opportunity to serve their sentence in the community, supervised by the Probation Service, provided they do not commit any further offences and comply with any of up to 14 requirements set by the court during this time. If the offender does not comply with the requirements or is convicted of another offence during the time of their SSO, they are likely to serve the original custodial term (this is referred to as the custodial term being ‘activated’; guidance can be found within the [Breach of a suspended sentence order guideline](#)), as well as the sentence they receive if a new offence has been committed.

### The pre-guideline period

Previously, only sentences of up to 12 months’ custody could be suspended but, following the introduction of the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 in April 2013, the maximum length of the sentence that could be suspended was increased to two years. Additionally, under this Act, imposing community requirements on an SSO became optional for sentencers, whereas previously they were mandatory.

In the years following the introduction of the LASPO Act, the Council observed a decline in the number of COs imposed. Over the same period, the number of SSOs increased substantially. Feedback from discussions with sentencers and with probation officers and staff suggested that this was being driven by a tendency for SSOs to be imposed as a more severe form of CO, even where the custody threshold may not have been passed. In such an instance, were the offender to go on to breach this SSO, a sentencer might then consider it inappropriate to activate the custodial term if it is clear that a custodial sentence

was not appropriate for the original offence. This risks diminishing the deterrent effect of SSOs. Therefore, in light of the evidence and in advance of the publication of the Breach guideline, the Council identified a need for clear guidance on the factors pertinent to decisions on the imposition of community and custodial sentences, and the steps a sentencer should consider when deciding whether or not to suspend a custodial sentence, in the form of a guideline.

### The Imposition guideline

The Imposition of community and custodial sentences guideline came into force on 1 February 2017. The Imposition guideline sets out the principles surrounding the imposition of a community or custodial sentence. It reminds sentencers that the seriousness of the offence should be the initial factor in determining which requirements to include in a community order and highlights specific considerations in this decision. It then emphasises that a custodial sentence must not be imposed unless the offence or the combination of the offence and one or more offences associated with it is “so serious that neither a fine alone nor a community sentence can be justified”. In laying out the approach to imposing a custodial sentence, it acknowledges that there is no general definition of where the custody threshold lies. However, it is clear that prison should be reserved as a punishment for the most serious offences.

The guideline highlights certain factors that may be relevant in deciding whether or not to suspend a custodial sentence, such as the offender’s history of compliance and prospect of rehabilitation.

For SSOs in particular, the guideline states that:

A suspended sentence **MUST NOT** be imposed as a more severe form of community order. A suspended sentence is a custodial sentence. **Sentencers should be clear that they would impose an immediate custodial sentence if the power to suspend were not available.** If not, a non-custodial sentence should be imposed.

The Imposition guideline intended to reduce the risk that sentencers were using SSOs as a more severe form of CO. This was an assumption made based on the trends observed after the introduction of LASPO. It was therefore expected that the proportion of offenders given SSOs would decrease, and the corresponding proportion of offenders given COs would increase, after the Imposition guideline came into force.

### The post-guideline period

Following the introduction of the Imposition guideline, early indications were that, contrary to expectations, there seemed to be no clear change in the relative proportions of SSOs and COs imposed. The Council spoke to various stakeholders across the criminal justice system to determine the reasons for this, and it seemed that in some instances the Imposition guideline might not have been being applied as intended.

At this time, the Council was in the process of developing the Breach guidelines, which would be more prescriptive regarding activation of the original custodial term in the event of a breached suspended sentence. Therefore, in early April 2018, the then chairman of the Council, Lord Justice Treacy, wrote to all members of the judiciary (judges and magistrates) to reinforce the Imposition principles. These principles included the fact that a

suspended sentence is a custodial sentence (not a more severe form of a community order) and they can only be imposed where the court has determined first that the custody threshold has been crossed and second that custody is unavoidable.

Now that the Imposition guideline has been in force for several years and an evaluation of the Breach guideline is also underway, analysis has been undertaken to look at trends over time in the sentence outcomes which may have been impacted by the Imposition guideline. This work has examined whether the guideline has had the anticipated impact on these sentence outcomes, as set out in the Imposition consultation response document and resource assessment. A summary of this analysis is provided in this paper.

## Approach

The Council has a statutory duty to produce a resource assessment ([s127 Coroners and Justice Act 2009](#)) alongside each sentencing guideline it publishes. The resource assessment is concerned with anticipating any impact on sentencing practice and correctional resources that is expected to occur as a result of the guideline, over and above any changes caused by unrelated issues, such as changes in the volumes and nature of cases coming before the courts. The findings of this analysis are therefore considered in light of the resource assessment which was produced to accompany the Imposition guideline.

The [Imposition resource assessment](#) outlined that the guideline was not intended or expected to affect the average severity of sentences – rather it sought to clarify the key principles associated with the imposition of COs and custodial sentences. It stated that while one impact might be an increase in the number of COs and a corresponding decrease in the number of SSOs (if SSOs were previously being imposed as a more severe form of CO in some cases), there were no anticipated impacts on the relative proportions of community and custodial sentences, since both COs and SSOs are served in the community. It was thus estimated that the guideline would have no overall resource impact on prison, probation or youth justice services.

Therefore, the analysis in this paper considers trends in the relevant sentence outcomes (custodial outcomes and COs) in relation to the scope and expectations set out in the resource assessment.

## Methodology and background statistics

### Methodology

Data from the Ministry of Justice's Court Proceedings Database (CPD) have been used to examine long term sentencing trends relating to the Imposition guideline, by providing descriptive statistics to explore changes in the different sentencing outcomes of relevance, over time. More information regarding this data source can be found in the **Further information** section at the end of this document.

The analysis in this report is conducted using data from the relevant calendar years before and after the guideline came into effect. The beginning of 2012 was chosen as a start date for the analysis, to include a period before the LASPO Act came into force in April 2013.

While it is usually the case that any analysis would consider the latest available year of data, during early 2020, as a result of the coronavirus (COVID-19) pandemic, court sitting times were drastically reduced, the most serious cases were prioritised, options for community orders were limited and the imposition of immediate custodial sentences required additional considerations (see the Council's note on [the application of sentencing principles during the COVID-19 emergency](#)). These issues impacted sentencing outcomes in 2020 and are still pertinent as the court backlogs recover. As such, since 2019 was the latest period of data available at the time of the analysis unaffected by the COVID-19 pandemic, the trend analysis in this paper is from 2012 to 2019 inclusive. We will be keeping the impact of the pandemic on the data under observation and may revisit it at a future date to ensure the Imposition principles are being applied appropriately.

Please note that data collected by the Council to review the impact of the Breach guidelines, (containing additional detail not available in the CPD, such as the proportion of breaches activated) will be considered within the context of the Breach guideline assessment, rather than in this review.

### **Background statistics**

In 2019, 75,500 adult offenders received a CO, representing 6 per cent of offenders sentenced that year. By comparison, 114,600 adult offenders received a custodial sentence (10 per cent of offenders sentenced in 2019), of which around 39,900 custodial sentences were an SSO, representing 35 per cent of all custodial outcomes and 3 per cent of total adult offenders sentenced that year.

In the published CPD data, sentencing outcomes can be grouped by offence category which relates to where the offence can be tried: 'summary' offences are typically only tried in the magistrates' courts, 'either way' offences can be tried either in magistrates' courts or the Crown Court and 'indictable only' offences can only be tried in the Crown Court.

Around half of all COs each year are given for triable either way offences, with the other half being given for summary only offences. However, COs are not the most frequent outcome for triable either way offences. Instead, the most common outcome for triable either way offences is a custodial sentence (47 per cent of outcomes in 2019: 16 per cent were SSOs and 31 per cent were immediate custody).

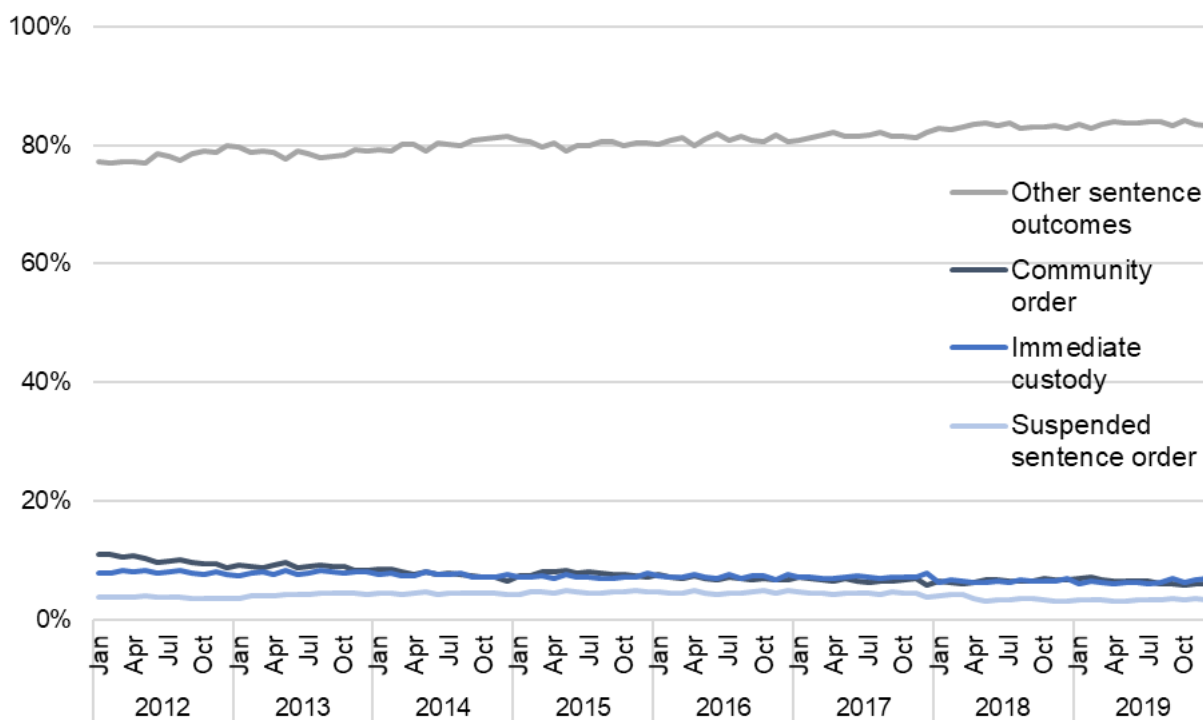
Custodial sentences are also the most common outcome for indictable only offences, comprising 90 per cent of all sentencing outcomes for this offence category in 2019 (12 per cent of these were SSOs and 78 per cent were immediate custody).

However, the majority of offenders each year (84 per cent of total offenders in 2019) are sentenced for summary only offences, for which most offenders receive a fine (91 per cent of outcomes for summary only offences in 2019, compared with 4 per cent CO, 1 per cent SSO and 1 per cent immediate custody). This is because a CO or custodial sentence is not available for many summary offences, such as speeding and television licence payment evasion. Fine outcomes represent 79 per cent of total sentencing outcomes for adults in 2019.

This means (as seen in Figure 1) most adult offenders sentenced each year are given sentence outcomes other than those of interest within this analysis. From 2012 to 2019, over three quarters of adult offenders were given either a fine, a discharge or were 'Otherwise dealt with' (which encompasses a range of alternative sentencing outcomes

including restriction orders, hospital orders, guardianship orders, police cells, and other disposals). These have all been grouped into 'Other sentence outcomes' for the analysis in this report. Less than one quarter of offenders were given either a community order, suspended sentence order or immediate custody.

**Figure 1: Proportion of sentencing outcomes for all adult offenders, January 2012 to December 2019**



Given that SSOs make up only a very small proportion of sentences for adults who have been convicted of summary offences (fluctuating between 1 and 2 per cent between 2012 and 2019), the analysis related to the Imposition guideline focuses on the more serious triable either way and indictable only offences, for which SSOs are more commonly imposed. This allows for a comparison of sentence outcomes where changes from one year to another can be seen more clearly.

## Findings

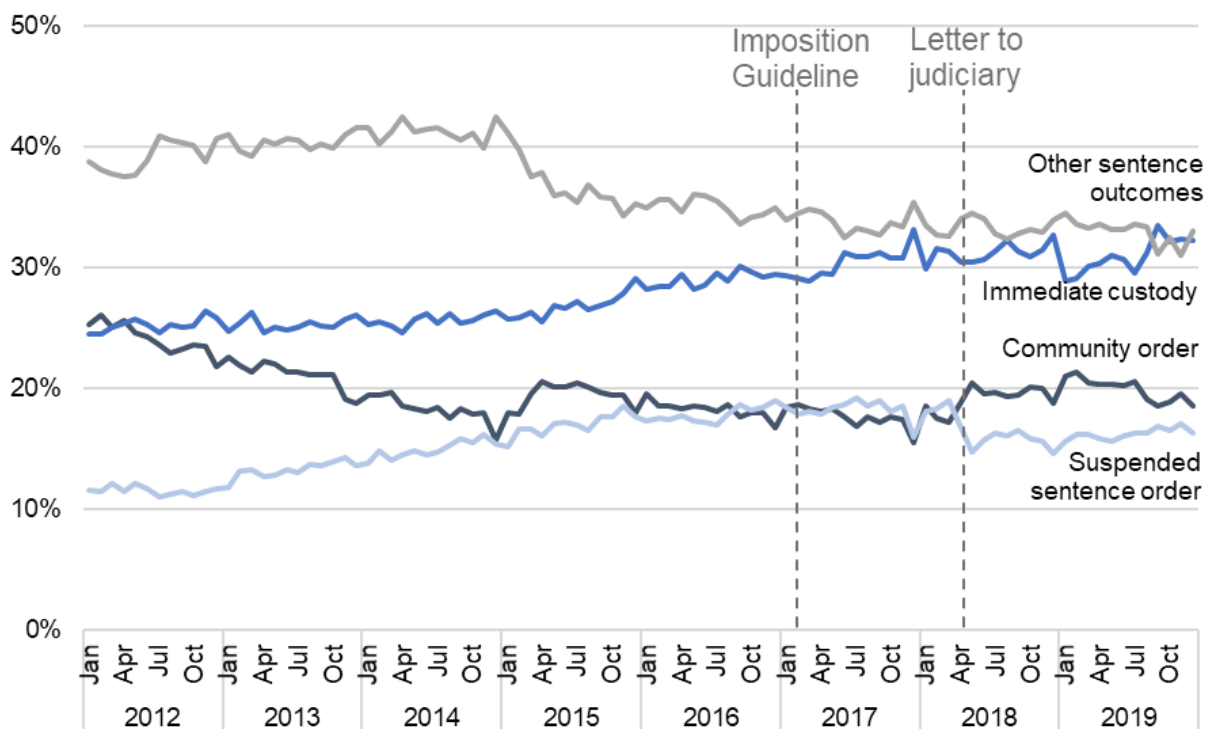
### Triable either way offences

From 2012 to 2019, the number of adult offenders sentenced for triable either way offences generally decreased, from around 263,800 in 2012 to 178,200 in 2019. If SSOs were always being imposed as set out in legislation, then after LASPO moved the threshold for suspension (making SSOs available for sentences of up to two years rather than 12 months), then even against the backdrop of an overall decrease in volumes sentenced we might have expected to see an increase in the proportion of SSOs, coinciding with a decrease in the use of immediate custody. This is because a greater proportion of offenders who would previously have been given immediate custodial sentences would now be eligible to have these custodial sentences suspended instead.

However, analysis of sentencing trends from 2012 to 2017 showed that the relative proportions of outcomes for triable either way offences moved contrary to expectations before the Imposition guideline. The use of immediate custody increased fairly consistently (from 25 per cent in 2012, to 30 per cent in 2017), while the use of SSOs also increased, (from 12 per cent in 2012 to 18 per cent in 2017). Instead, there was a corresponding decrease in the proportion of COs being imposed (from 24 per cent in 2012, down to 18 per cent in 2017). The increase in SSOs coinciding with the decrease in COs, alongside the consistent increase in immediate custody from 2012 onwards, was interpreted as evidence that SSOs may have sometimes been imposed inappropriately as a more severe form of a CO, prior to the implementation of the Imposition guideline.

After the guideline came into force, it was anticipated that success in clarifying the principles for imposing community and custodial sentences would reverse the trend of an increase in SSOs at the expense of COs, rather than immediate custody. In the period since the Imposition guideline has been in force, trend analysis seems to support this original assumption, as the trend has indeed reversed, although the main movement in the proportion of outcomes appears to coincide with the date of the follow-up communication sent by the then chairman of the Sentencing Council to all sentencers in April 2018, rather than the guideline in force date of February 2017.

**Figure 2: Proportion of sentencing outcomes for adults sentenced for triable either way offences only, January 2012 to December 2019**



Looking month-by-month (Figure 2), there was no clear change in the use of SSOs in the months following the Imposition guideline coming into force in February 2017: SSOs made up between 18 to 19 per cent of adult offenders sentenced for triable either way offences in each month from mid-2016 through to late 2017. However, there was a noticeable decrease in the proportion of SSOs from early 2018, from 19 per cent in March, to 17 per cent in April and to 15 per cent in May, which was the lowest monthly proportion since January 2015. Over the same period, the proportion of COs started to increase, rising from

a low of 15 per cent in December 2017 up to 20 per cent of adult offenders sentenced for triable either way offences in May 2018, for the first time since September 2015.

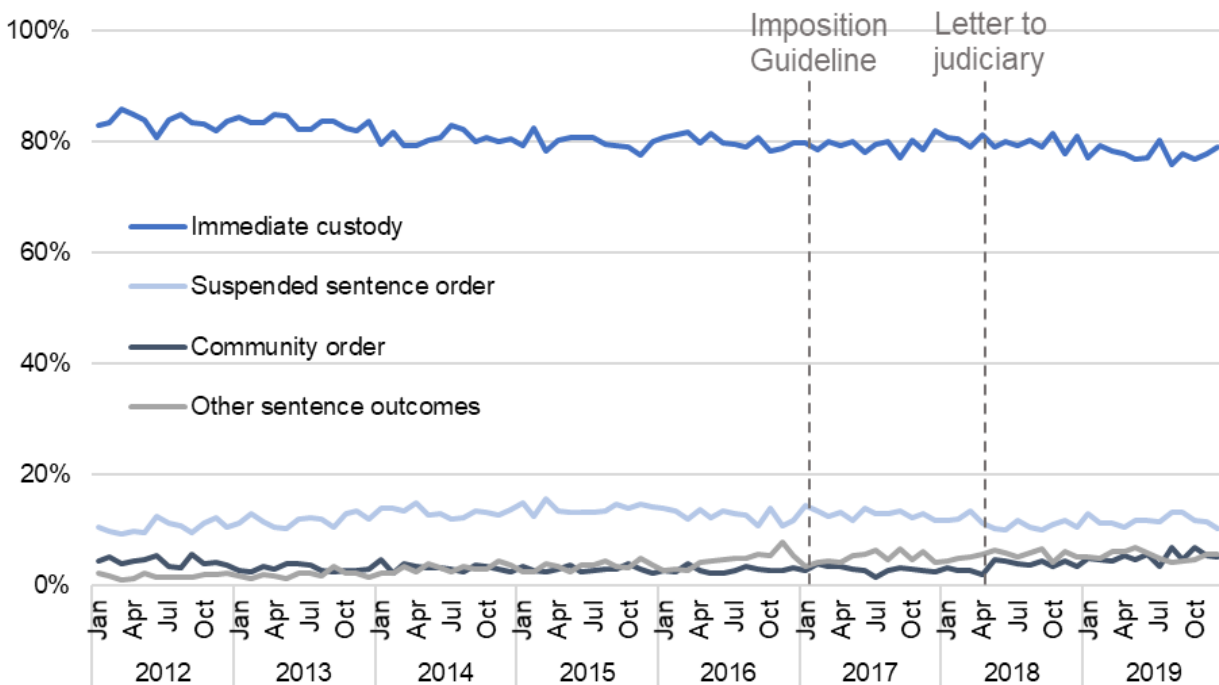
The timing of these shifts in the proportion of both COs and SSOs coincides with the letter which was sent in early April 2018. From the middle of 2018 onwards, the proportion of COs and SSOs remained fairly stable at their new respective levels. This evidence suggests that while the Imposition guideline did not immediately have an impact on sentencing outcomes, the letter from the Chairman of the Sentencing Council may have been successful in directing sentencers' attention to the guideline and clarifying its principles. However, it should be noted that it is impossible to tell from this data analysis alone what caused the changes in trend and there may have been other factors influencing these, including changes in the mix of cases coming before the courts.

**Indictable only offences**

The number of adult offenders sentenced for indictable only offences has also generally decreased in recent years, from around 14,200 in 2012 to around 10,900 in 2019.

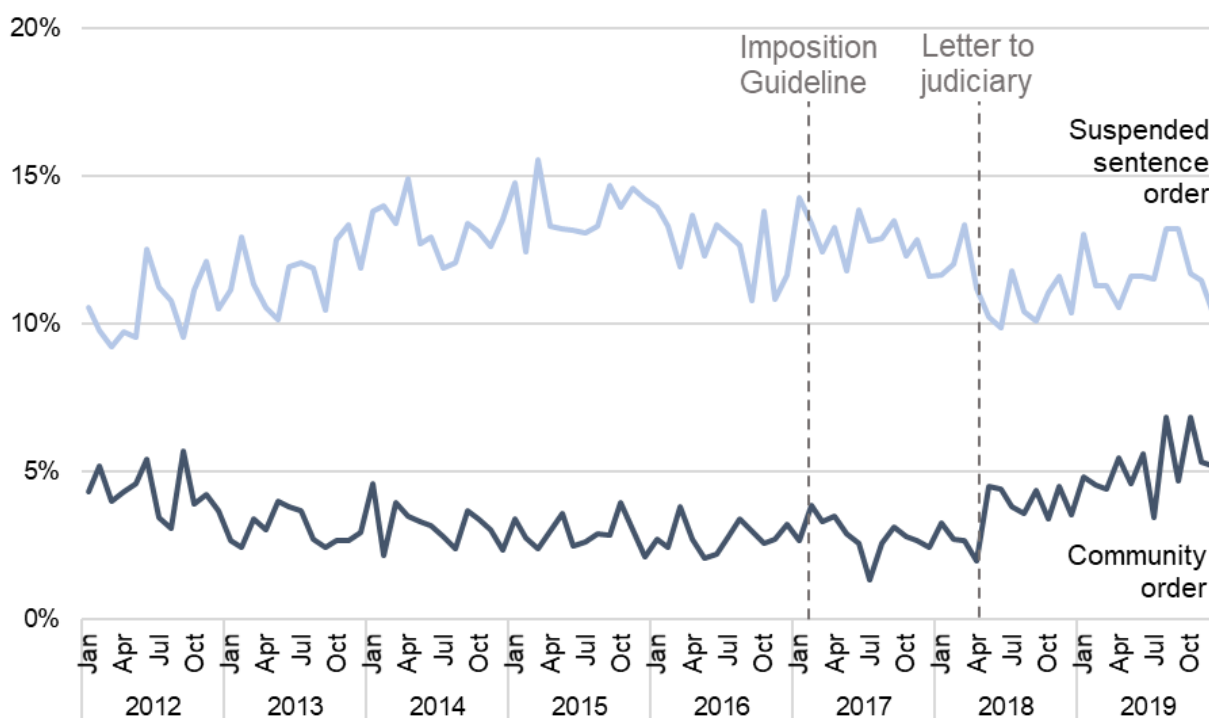
As seen in Figure 3, the majority of adult offenders receive immediate custody for these offences. Nevertheless, there are still visible trends across the other sentencing outcomes relevant to Imposition, especially if immediate custody and other sentencing outcomes are excluded from the analysis (Figure 4).

**Figure 3: Proportion of sentencing outcomes for adults sentenced for indictable only offences, January 2012 to December 2019**





**Figure 4: Proportion of community orders and suspended sentence orders received by adults sentenced for indictable only offences, January 2012 to December 2019**



The analysis for indictable only offences provides a slightly different picture than for triable either way offences. As with triable either way offences, there was generally an increase in the proportion of SSOs for indictable offences before the guideline came into force, from 11 per cent in 2012 to 13 per cent in 2017. However, in contrast to either way offences, this coincided with a decrease in the use of immediate custody, from 84 per cent in 2012 to 79 per cent in 2017 (see Figure 3). These trends together align with what would have been expected if SSOs were being imposed correctly as set out in legislation. Nevertheless, there was also a small decrease in the proportion of COs over the same period, but this decrease was much smaller than for triable either way offences (from 4 per cent in 2012 to 3 per cent in 2017).

If SSOs were previously being imposed as a more severe form of CO for indictable only offences, and the guideline had the intended impact from its initial in force date, then we might have expected to have seen a decrease in the proportion of SSOs in early 2017. However, this was not the case immediately. Instead (as seen for triable either way offences), there was a decrease in the proportion of SSOs later in 2018, along with a small increase in the proportion of COs, both coinciding with the date of the letter being sent to the judiciary regarding the Imposition guideline.

Looking month-by-month at indictable only offences after the Imposition guideline came into force in February 2017, the proportion of adult offenders sentenced to an SSO fluctuated between 12 and 14 per cent throughout 2017, dropping to 11 per cent in April 2018 and 10 per cent in May 2018: the first month since September 2013 that the proportion of SSOs dropped this low. Around the same time, the use of COs increased to 4 per cent. Although the proportion of COs had been fluctuating between 1 and 4 per cent since early 2014, it was more typically around 2 to 3 per cent each month, becoming fairly sustained at the higher level of 4 per cent from May 2018 onwards, which was shortly after the Chairman's letter was cascaded to the judiciary regarding the Imposition guideline. The

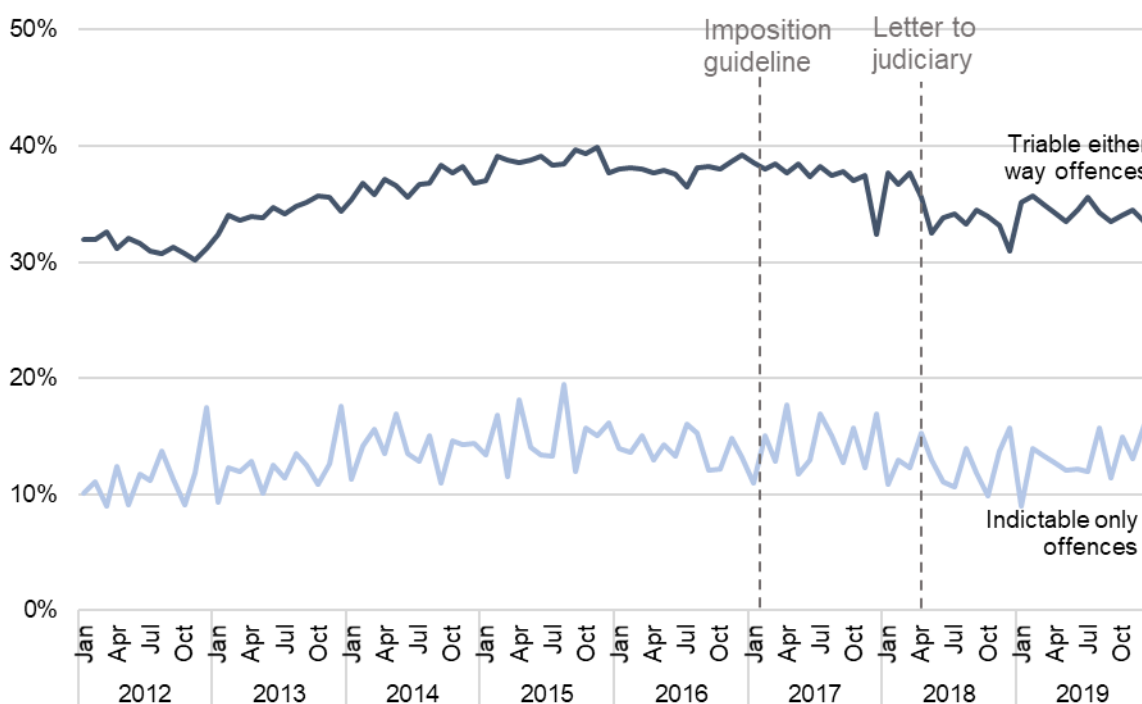
proportion of COs later reached 5 per cent by January 2019 and rose higher than this in some months later that year. Over this same period, the proportion of immediate custodial outcomes fluctuated with no clear pattern.

As with the trend analysis for triable either way offences, it is impossible to tell from this alone what caused the trends observed. Nevertheless, this analysis suggests that SSOs were probably already largely being imposed appropriately for indictable only offences before the Imposition guideline came into force. While it is possible that some SSOs were being imposed in place of COs following LASPO, the extent of this is likely to have been much smaller than for triable either way offences. There does not appear to be a strong indication of a change around the time of the Imposition guideline coming into force. However, some small shifts in the proportion of SSOs and COs from around the time of the Chairman’s letter being sent out in early 2018 provide some evidence that this follow-up correspondence may have had some impact.

### Proportion of custodial sentences suspended

Looking month-by-month at the proportion of total custodial sentences being suspended (Figure 5), there is some evidence of a decrease in the proportion of custodial sentences being suspended for triable either way offences around April 2018 specifically, coinciding with the letter to the judiciary. This supports the earlier analysis regarding the trends for either way offences. The fluctuation in proportions for indictable only offences is too great to identify any particular trends for this offence group, although following on from the earlier analysis we might have expected to see less of an impact for this offence group anyway, if the principles around the custody threshold and the suspension of custodial sentences were mostly being applied correctly before the Imposition guideline.

**Figure 5: Proportion of custodial outcomes suspended for triable either way and indictable only offences, January 2012 to December 2019**

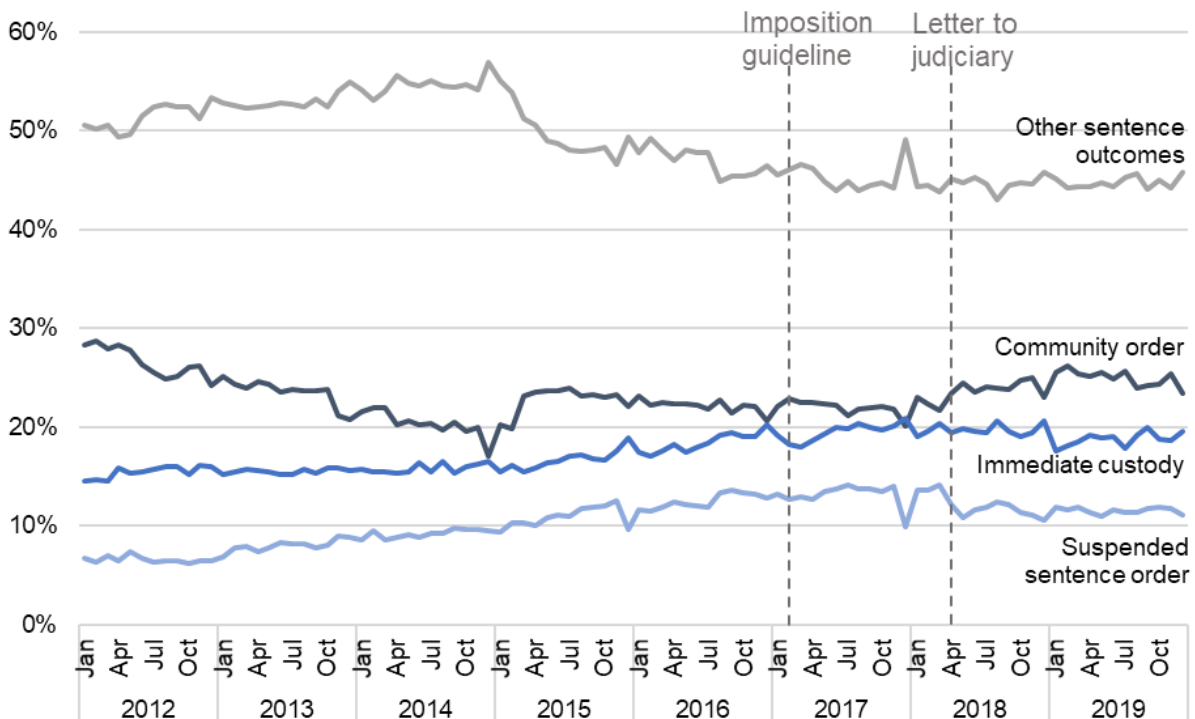


## Court type

Given that indictable only offences can only be sentenced at the Crown Court, the analysis by court type focussed only on the data from triable either way offences.

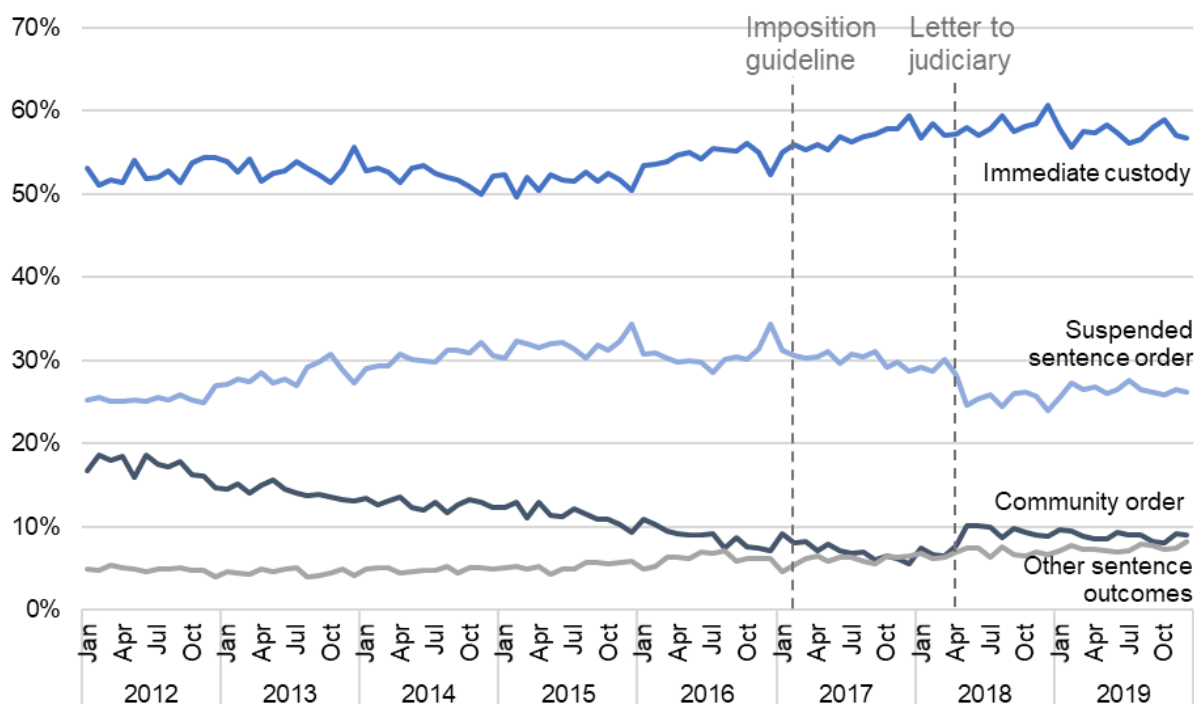
At magistrates' courts, the majority of sentence outcomes are other outcomes such as fines. This means the proportions for the outcomes of relevance to Imposition (SSOs and COs) fluctuate within a relatively small range, which can make it harder to identify any trends. Nevertheless, as seen in Figure 6, there is some evidence of an increase in COs around April 2018 coinciding with the letter that was sent to sentencers, and a corresponding decrease in SSOs at the same time. Meanwhile, the proportion of offenders receiving immediate custody appears to plateau from early 2017 onwards.

**Figure 6: Proportion of sentencing outcomes for adults sentenced at magistrates' courts for triable either way offences, January 2012 to December 2019**



At the Crown Court, as seen in Figure 7, the decrease in proportion of COs imposed from the beginning of 2012 slows around the end of 2017 and then increases rapidly from 6 per cent in March 2018 to 8 per cent in April and 10 per cent in May, the highest proportion since March 2016. Over the same time, the proportion of SSOs decreases to 25 per cent in May 2018, its lowest proportion since November 2012. The movement in proportions for both of these outcomes coincides with the timing of the letter being cascaded to the judiciary.

**Figure 7: Proportion of sentencing outcomes for adults sentenced at Crown Court for triable either way offences, January 2012 to December 2019**



This trend analysis provides evidence that the letter in particular was effective in encouraging Crown Court sentencers to apply the principles as laid out in the Imposition guideline.

### Offence type

Trend analysis was conducted at a more detailed offence type level. However, interpretation of this analysis was complicated by other trends driven by case mix and individual offence-specific impacts, such as the creation of new offences changing the overall sentencing severity for a particular offence category. Nevertheless, no evidence was found to suggest that certain offence types have been more impacted than others by the Imposition guideline.

### Demographics

It is not possible to draw robust conclusions about sentencing outcomes for demographic groups containing the smallest volumes of offenders, since the relatively large monthly fluctuations preclude reliable trend analysis. However, for those groups with larger volumes of offenders sentenced, there is predominantly no clear evidence of differential impacts of the Imposition guideline, as detailed below.

### Ethnicity

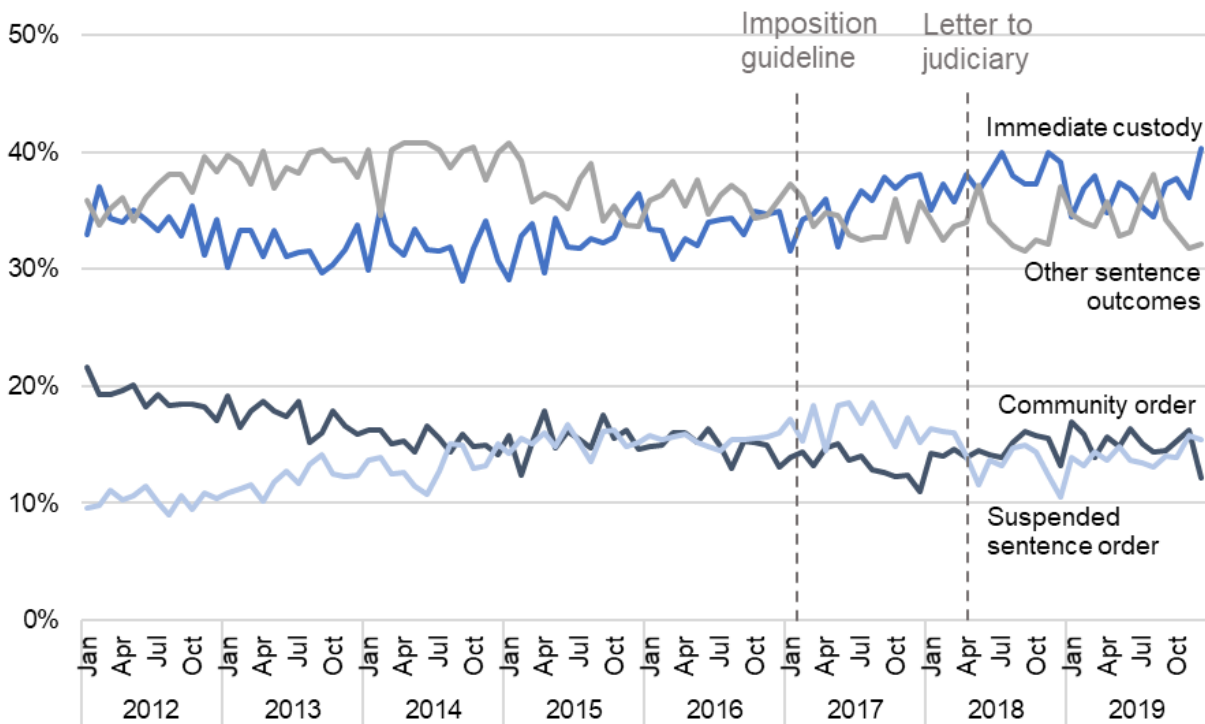
The ethnicity data in the CPD used for this analysis are on a defendant self-reported basis. Most ethnicity categories do not have a sufficient volume of sentenced offenders to support robust analysis of trends in sentence outcome, with the exception of black offenders, white offenders and offenders for whom their ethnicity was either not recorded or not known. This latter unknown ethnicity category has not been considered helpful to consider in isolation and the trend for all known ethnicities is mostly driven by the high

proportion of white offenders (82 per cent of all those sentenced with a known ethnicity in 2019). Therefore, the analysis in this review compares the proportion of sentencing outcomes for black and white offenders against each other.

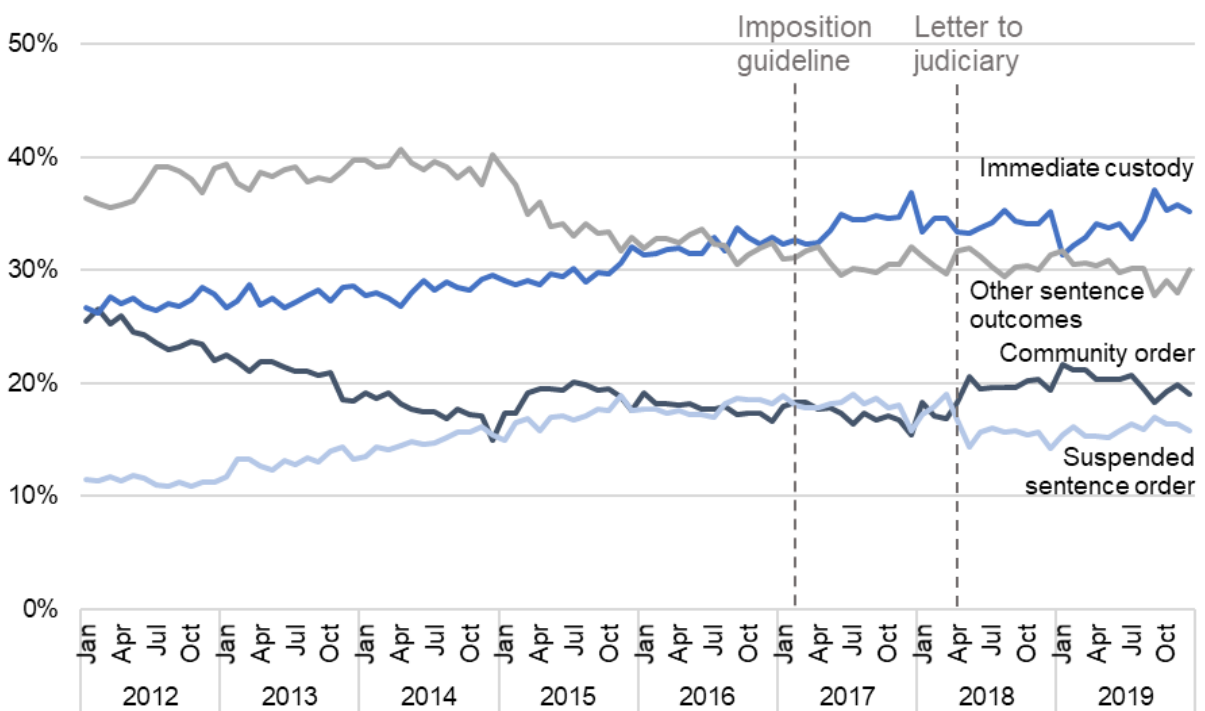
The analysis on ethnicity has been undertaken for the triable either way and indictable offence groups combined. In addition to the rationale provided in the **Methodology and Background statistics** section earlier in this review regarding offence category, this has been done because the majority of summary only offences do not have offender ethnicity recorded. For less serious offences, offenders are often sentenced without attending a police station or the court, meaning there is little or no opportunity to collect ethnicity data. The MoJ Criminal Justice System Statistics quarterly publication does not contain published statistics on offender ethnicity for this offence category.

In 2012, the proportion of black and white offenders sentenced to an SSO was largely comparable (10 per cent and 11 per cent respectively). However, the increase in the proportion of SSO outcomes seen in the post-LASPO period was slightly steeper for white offenders than for black offenders and, by 2016 (the year before the Imposition guideline came into force), 15 per cent of black offenders were sentenced to an SSO compared to 18 per cent of white offenders. This increase then plateaued through 2016 and 2017 and while fluctuations in the trend mean that in some months the proportion of black offenders receiving an SSO was higher than for white offenders, since early 2018 the proportion of SSOs imposed has generally fallen by a similar degree for both black and white offenders; in 2019 14 per cent of black offenders received an SSO compared with 16 per cent of white offenders (see figures 8 and 9).

**Figure 8: Proportion of sentencing outcomes for black offenders sentenced for triable either way and indictable only offences, January 2012 to December 2019**

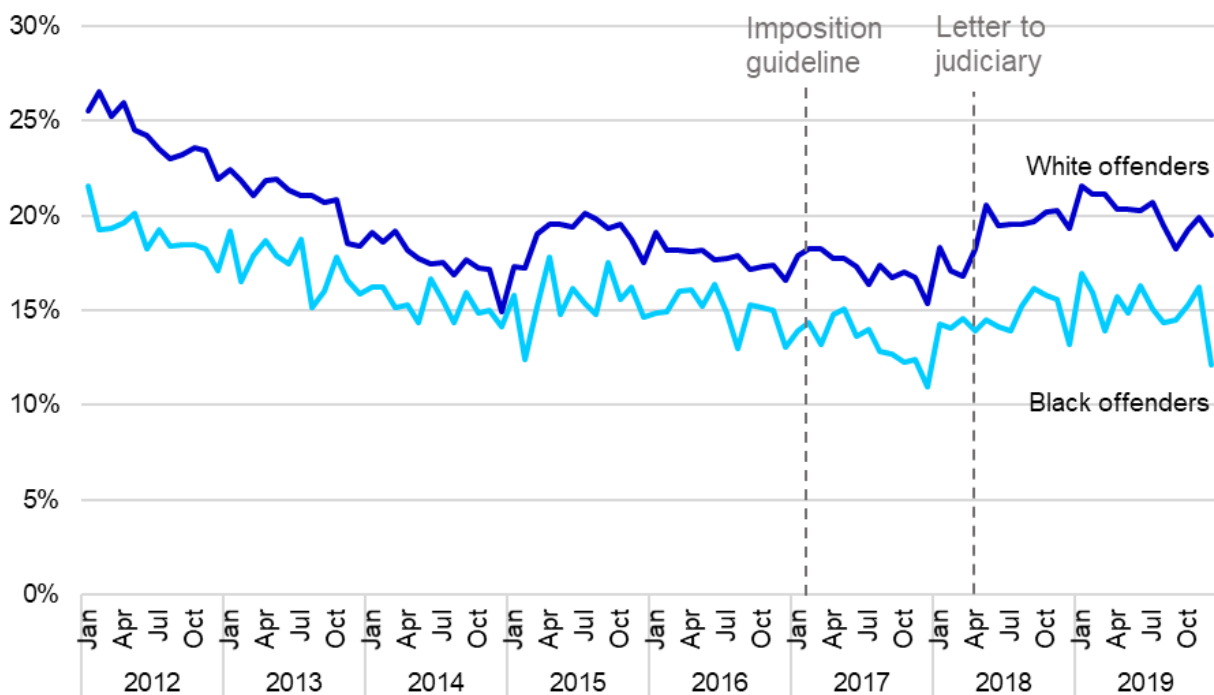


**Figure 9: Proportion of sentencing outcomes for white offenders sentenced for triable either way and indictable only offences, January 2012 to December 2019**



By contrast, the proportion of black offenders receiving a CO was consistently lower than for white offenders before the Imposition guideline came into force (averaging 15 per cent in 2016 for black offenders compared with 18 per cent for white offenders). As seen in Figure 10, the downward trend decreased further still through 2017, with an average of 13 per cent for black offenders and 17 per cent for white offenders, before starting to increase from early 2018. In May 2018, the month after the letter was cascaded to sentencers regarding Imposition, the proportion of white offenders receiving a CO was 21 per cent while the comparative figure for black offenders this month was 14 per cent, (the average across 2018 for black offenders was 15 per cent, compared with 19 per cent for white offenders).

**Figure 10: Comparison of the proportion of community order sentencing outcomes for black and white offenders, January 2012 to December 2019**



One possible interpretation of this slightly widening gap between the proportion of CO outcomes for Black and White offenders is that the Imposition guideline and subsequent correspondence had a greater impact for White offenders than for Black offenders, in relation to the increase in proportion of COs.

However, this trend analysis alone is not evidence of a disparity in outcomes. Given the differences in case/offence mix between black and white offenders – for example, a much higher proportion of black offenders are sentenced to drug offences (39 versus 16 per cent in 2019) and a much higher proportion of white offenders are sentenced to theft offences (33 versus 17 per cent in 2019) – and the lower number for black offenders sentenced (13,800 compared with 109,500 white offenders sentenced in 2019 across these two offence groups), this difference should be interpreted with caution. Nevertheless, these findings and the sentencing of different cohorts of offenders will be considered within the wider project to review the Imposition guideline in full, which is currently underway.

## Sex

The analysis on offender sex has also been undertaken for triable either way and indictable only offences, for consistency with the rest of the analysis in this report. While the majority of males receive immediate custody, and females more typically receive COs for these offence groups, the trends discussed previously in this report for all offenders can still be seen in the proportion of SSO and CO outcomes over time for both males and females.

For males, the proportion of SSOs steadily increased from 2012 to late 2016 where it stabilised at around 18 per cent, but then in early 2018 (which coincided with the letter cascaded to the judiciary), the proportion decreased from 18 per cent in March, to 16 per cent in April and then 14 per cent in May – the lowest proportion since July 2014. Similarly, the proportion of COs increased from an average of 16 per cent across 2017, to a peak of 19 per cent in May 2018.

For females, the proportion of both immediate custody and SSO outcomes increased over time against a decrease in the proportion of COs until 2017, at which point the trends converged and for several months a very similar proportion of offenders were receiving a CO, SSO or immediate custody. These trends then started to reverse. However, the largest movement wasn't seen until early 2018 for SSOs, whereupon the proportion decreased from an average of 19 per cent in 2017, to 17 per cent in April 2018 and then 15 per cent in May 2018, before averaging at 17 per cent until the end of 2019.

## Age

Again, this analysis has been conducted on the triable either way and indictable only offence groups and excludes summary only offences. Prior to 2017, unknown ages defaulted to 25 in the underlying data and so ages 25 and above are grouped together in the published data before this date. This issue does not affect the following analysis.

The most frequent age category for sentenced offenders is the 30 to 39 age group, comprising around one third (32 per cent) of total offenders sentenced in 2019 across these offence groups. Different age groups show slightly different patterns of relative proportions of sentencing outcomes, particularly younger and older offenders. Community orders are consistently a more common outcome for 18 to 20 year olds, compared with all other age groups. Nevertheless, the proportion of COs did also decrease from 2012 until 2017 from 30 per cent in January 2012 to 21 per cent in February 2017. Then, after the Imposition guideline came into force, the proportion rose quite quickly from the middle of 2017, peaking at 26 per cent in March 2019. This pattern of an increase starting in the middle of 2017 as opposed to after April 2018 when the letter was circulated by the Chairman is contrary to that seen across most of the analysis in this report. Similarly, the proportion of SSO outcomes rose from 9 per cent in January 2012 and was 20 per cent in February 2017. This proportion then fell slightly from the middle of 2017 onwards; in 2019 18 per cent of offenders aged 18 to 20 received an SSO, on average.

Offenders over the age of 50 have been combined for this analysis due to low volumes. This age group consistently has a higher proportion of SSO outcomes compared with all other age groups. However, even within this pattern, the proportion of SSOs still rose from 15 per cent in January 2012 and by February 2017 it was 21 per cent. Consistent with the trend for all age groups across the triable either way and indictable only offence groups, this proportion remained fairly stable until 2018, when it moved from 23 per cent in March



2018 to 18 per cent in April and 16 per cent in May. These timings coincide with the letter being sent out. The trend regarding the proportion of COs for this age group shows a similar pattern to that seen for all ages combined; the proportion decreased from 21 per cent in January 2012 and was 18 per cent in February 2017 before falling further still even after the Imposition guideline was in force. The proportion then started to increase in early 2018 at the same time as the proportion of SSOs decreased.

## Conclusion

The Council concludes that, based on the evidence available, the Imposition guideline did not immediately have an impact on sentencing outcomes. However, trend analysis on a month-by-month basis suggests that the letter from the former Chairman of the Sentencing Council was successful in directing sentencers' attention to the Imposition guideline and clarifying the principles regarding the imposition of SSOs. This is demonstrated by the increase in proportion of COs and associated decrease in proportion of SSOs from around April 2018, which was particularly apparent for triable either way offences. For these offences, the evidence is in line with the expectations set out in the [Imposition resource assessment](#).

For indictable only offences, the relative consistency in the proportion of custodial sentences suspended over time suggests that the principles around the application of the custody threshold and the suspension of custodial sentences were mostly already being applied correctly before the Imposition guideline. Nevertheless, trend analysis still indicates that the letter was effective in reinforcing the need for Crown Court sentencers to apply the principles around suspension of custodial sentences, as laid out in the Imposition guideline. While similar trends are evident at the magistrates' courts, the high proportion of fine and other sentence outcomes mean the conclusions from this analysis are more tentative.

There is no strong evidence that the Imposition guideline is leading to differential impacts for any specific offence types or demographic groups. Observed differences in sentencing outcomes appear to be continuations of those which were seen before the guideline came into force, such as the higher proportion of COs for 18 to 20 year olds, a higher proportion of SSOs for offenders aged 50 and above, and a lower proportion of COs for black offenders compared with white offenders.

Generally, it should be noted that it is impossible to tell from the trend analysis in this review alone what has caused the changes observed in the proportion of CO and SSO outcomes. There will have been many other factors influencing the outcomes which were handed down by sentencers over the period analysed, including (but not limited to) changes to the mix of cases coming before the courts, changes to legislation and the publication of various offence specific sentencing guidelines, each with their own impact on sentencing outcomes. Therefore, the impact of the Imposition guideline will continue to be monitored as part of analysis undertaken for evaluations of offence specific guidelines.

In summary, the evidence suggests that the combination of the Imposition guideline and subsequent communications were effective in changing sentencer behaviour regarding the application of the principles for the imposition of community and custodial sentences, including those surrounding the decision to suspend a custodial sentence. Despite this, the Council is currently undertaking a wider project to review the Imposition guideline in full, which includes other sections of the guideline that have not been included in scope of this

review and were not included in the resource assessment of the original guideline. This will also include consideration of its impact on different groups of offenders, and whether there are any ways in which it could mitigate against any potential differential impacts in the future. The relevant findings from this review are being fed into this wider project and will be of benefit for considering any future revisions to the Imposition guideline.

## Authors

Charlotte Davidson and Amber Isaac  
Office of the Sentencing Council

## Further information

### Data sources and quality

The Court Proceedings Database (CPD), maintained by the Ministry of Justice (MoJ), is the data source for these statistics. Every effort is made by MoJ and the Sentencing Council to ensure that the figures presented in this publication are accurate and complete. However, it is important to note that these 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 found on the [Criminal Justice System Statistics webpage](#).

The CPD data presented in this paper cover sentences in all courts, for offenders aged 18 or over, excluding companies and only include cases where the 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.

### General conventions

Actual numbers of sentences have been rounded to the nearest 100, when more than 1,000 offenders were sentenced, and to the nearest 10 when fewer than 1,000 offenders were sentenced.

Proportions of sentencing outcomes have been rounded to the nearest integer. Percentages in this report may not appear to sum to 100 per cent, owing to rounding.