

Evaluation of the Sentencing Council's intimidatory offences definitive guidelines: Summary

Introduction

The Sentencing Council has a statutory duty to monitor the operation and effect of its sentencing guidelines and to draw conclusions from the information obtained ([s129 Coroners and Justice Act 2009](#)).

This evaluation covers five intimidatory offences guidelines, which came into force on 1 October 2018. These cover 11 offences, including harassment and stalking offences.

These guidelines are for use in all courts and apply to all adult offenders (those aged 18 or over at the time of sentence) and cover:

- a combined guideline covering the offences of [harassment, stalking and racially or religiously aggravated harassment/stalking](#)
- a combined guideline covering the offences of [harassment \(putting people in fear of violence\), stalking \(involving fear of violence or serious alarm or distress\), and racially or religiously aggravated harassment \(putting people in fear of violence\)/stalking \(involving fear of violence or serious alarm or distress\)](#)
- [threats to kill](#)
- [disclosing private sexual images](#)
- [controlling or coercive behaviour in an intimate or family relationship](#)

The offence of disclosing private sexual photographs and films with intent to cause distress (contrary to s.33 of the Criminal Justice and Courts Act 2015) was repealed on 31 January 2024. However, this offence has been included in the evaluation for completeness.

Approach

To evaluate the operation and effect of the intimidatory offences guidelines, this report reviewed whether the guidelines may have had any impact on sentencing outcomes and explored whether there were any issues with implementation. Furthermore, it reviewed whether any changes which have taken place were in line with those outlined in the [Sentencing Council's resource assessment of the intimidatory offences guidelines](#).

This evaluation considered the available evidence from multiple sources, including:

- statistics on volumes, outcomes and sentence lengths for all of the intimidatory offences using the Ministry of Justice Court Proceedings Database (CPD), both pre and post the guidelines, and across a longer time series
- analysis of a data collection undertaken in all magistrates' courts of adult offenders sentenced to harassment or stalking, pre and post guideline. This collected detailed information on sentencing including, culpability, harm, aggravating and mitigating factors, in addition to starting points and final sentence outcomes. The data is published alongside this evaluation: [Harassment and stalking data collection](#), and
- content analysis of a sample of Crown Court judges' sentencing remarks and Court of Appeal transcripts from the post guideline period

Findings

The following sections cover the key findings from the evaluation for each of the offences covered by the intimidatory offences guidelines.

Harassment

- For the offence of harassment there was an increase in community orders (COs) as a sentence outcome, and a corresponding decrease in suspended sentence orders (SSOs) and fines after the Harassment and stalking guideline came into force, despite no intention for the guideline to change sentencing practice.
- Some modest changes in sentencing outcomes emerged following the publication of a letter in April 2018 reminding sentencers about the principles of the Imposition guideline. Following the introduction of the Harassment and stalking guideline a further increase was seen in the proportion of COs, and a decrease in SSOs.
- No substantial or sustained changes to the mean average custodial sentence length (ACSL) were seen post guideline for harassment, suggesting the guideline did not have an impact on the length of custodial sentences issued.

Stalking

- A similar change in sentencing practice was seen to have occurred post guideline for stalking as was seen for harassment. There was an increase in the proportion of offenders receiving COs, and a decrease in the proportion of offenders receiving SSOs after the guideline came into force.
- However, there were also some changes to sentencing seen pre guideline, which may have been tied to the Imposition guideline.
- Due to low volumes of returns for the magistrates' court data collection, more in depth analysis was not possible. However, some of the data indicate that the increase in COs as a final sentence outcome appears to be due to the increased opportunities for receiving a CO starting point under the Harassment and stalking guideline when compared to the previous Magistrates' Court Sentencing Guideline.
- Overall, it is not possible to determine the degree to which the changes seen were specifically due to the guideline compared with other factors.

- While proportions of immediate custodial sentences remained relatively stable, there was a very slight decrease in ACSLs for stalking across 2018 to 2022, but it is unclear what may be driving this, and it was concluded the guideline has not impacted custodial sentence lengths.

Harassment (putting people in fear of violence)

- For the offence of harassment (putting people in fear of violence) there was an overall increase in the proportion of COs, and a decrease in the proportion of SSOs issued from 2018. However, the proportions of sentence outcomes in 2022 reverted back to a similar distribution seen pre guideline.
- The changes to the proportion of COs and SSOs appear to have started when the Imposition guideline letter was published in April 2018, before the Harassment and stalking (fear of violence) guideline came into force.
- Proportions of immediate custodial sentences remained similar pre and post guideline. However there was a slow and steady increase in ACSL until 2022, which suggests the increase was not tied to the introduction of the guideline. It was also concluded that it was not related to the increase to the statutory maximum sentence which increased from 5 years' custody to 10 years' custody on 3 April 2017, as any changes relating to these would have been expected to be seen in 2018 and 2019, before levelling off.
- It appears that the Harassment and stalking (fear of violence) guideline has not had a clear impact on sentencing outcomes or increasing sentence lengths for immediate custodial sentences, which is in line with the intention stated in the resource assessment.

Stalking (involving fear of violence or serious alarm)

- There has been an increase in immediate custodial sentences and a decrease in the proportion of SSOs issued post guideline for the offence of stalking (involving fear of violence or serious alarm). However, these changes may be related to the introduction of the Imposition guideline in February 2017, rather than the Harassment and stalking (fear of violence) guideline, as no changes were seen immediately after it came into force.
- The ACSL increased in 2018 and 2019 and then stabilised across 2020 to 2022. This increase may be related to the slight increases in the proportion of cases seen before the Crown Court and the increase in offenders receiving custodial sentences of greater than 1 year.
- There has been an increase in sentence lengths across the board, rather than just at the very top end as anticipated in the resource assessment. However, it is not possible to determine how much of this impact is due to the guideline versus the change in statutory maximum sentence, which increased from 5 years' custody to 10 years' custody from 3 April 2017.

Racially or religiously aggravated harassment/stalking

- Immediately after the introduction of the Harassment and stalking guideline there was an increase in the proportion of COs, and a decrease in the proportion of SSOs issued for those sentenced for racially or religiously aggravated harassment/stalking. However, it appears these changes were short lived, and after 2019 the proportion of cases receiving COs and SSOs reverted back to levels seen before the guideline's introduction.
- ACSLs appear to have remained stable and in line with figures seen prior to the introduction of the guideline; however these figures are based on a low volume of offenders.
- Transcript analysis suggested that overall, sentences are aggravated by factors of race or religion, as required by the guideline.

Racially or religiously aggravated harassment (putting people in fear of violence)/stalking (involving fear of violence or serious alarm or distress)

- There was an increase in COs and a decrease in SSOs immediately post guideline. The lower proportion of SSOs appeared to be broadly maintained over time; however, there were continued fluctuations in the proportion of COs across 2019 to 2022.
- There has been an overall increase in ACSLs since 2012; however, due to very low volumes, it is not possible to determine whether changes to sentence outcomes or fluctuations in ACSLs were due to the guideline as the low volumes meant it was difficult to identify meaningful trends in the data.
- Analysis of the small sample of transcripts suggested there is a mixed picture in terms of how sentencers were applying racial and religious aggravation as part of this guideline.

Threats to kill

- There was an increase in COs and decrease in SSOs immediately after the introduction of the Threats to kill guideline. However, these changes appear to revert again across 2020 and 2021.
- There does not appear to be any clear changes in sentence outcomes resulting from the Threats to kill guideline coming into force, as anticipated in the intimidatory offences resource assessment.
- The ACSL did appear to increase as a result of the introduction of the guideline, which had not been anticipated. Sentences of 2 to 4 years' custody in particular increased, and sentences of up to 2 years decreased. Analysis reviewing the starting points of the Threats to kill guideline and a sample of transcripts suggests this may be a result of either more cases falling into the highest, 'A1' category, or the starting points received for 'A1' cases being higher than under the Magistrates' Court Sentencing Guideline.

Disclosing private sexual photographs and films with intent to cause distress

- Overall, for the offence of disclosing private sexual photographs and films with intent to cause distress, there was a slight decrease in the proportion of SSOs and an increase in proportions of COs briefly after the guideline came into force, but these changes were then reversed. It is unclear whether the changes seen were driven by the introduction of the guideline, the Imposition guideline or another factor, as the data fluctuates over these periods.
- The ACSL for this offence has increased steadily over time since its introduction, eventually plateauing from 2020 onwards. There were some changes seen in median ACSL across 2018 and 2019, but it is unclear whether these are due to the guideline or part of a pre-existing trend.
- Transcripts from cases seen at the Crown Court do not highlight any issues in sentencing, and show that there is a split of harm cases seen, and that the factors 'Conduct intended to maximise distress and/or humiliation' and 'Images circulated widely/publicly' in particular were discussed for cases falling into culpability A.

Controlling or coercive behaviour in an intimate or family relationship

- Overall, changes in sentencing practice for the offence of controlling or coercive behaviour have been occurring since the offence came into force in 2015. However, the guideline may have had a small impact on increasing immediate custodial sentences and decreasing the proportion of COs.
- The ACSL increased in 2018 and 2019 before stabilising from 2020 onwards, suggesting the guideline has played a role in this increase. Analysis of transcripts suggest the increase in sentencing lengths may be due to the volume of offenders falling into the highest, 'A1', category. This is not in line with the resource assessment, which anticipated no changes as a result of the guideline.

Demographic analysis

- Across all offences, the vast majority of offenders were white, and a substantial proportion of offenders also had their ethnicity recorded as 'Not recorded/not known'. This has meant that for several offences no meaningful analysis can be conducted because the volume of black, Asian, mixed or other ethnicity offenders was so low the comparisons between groups were not robust and/or very limited conclusions could be drawn.
- Where comparisons were robust enough to conduct analysis - harassment, stalking, harassment (fear of violence) or stalking (fear of violence), disclosing private sexual images and controlling or coercive behaviour - no differences between groups as a result of the guideline coming into force were found
- Analysis for threats to kill also showed that post guideline, a higher proportion of black offenders received immediate custody from 2019 onwards. Data grouping 2019 to 2022 showed that black offenders received the highest proportion of custody at 61 per cent, compared with 52 per cent of white offenders.

- Additionally, analysis for threats to kill indicated that when grouping 2019 to 2022 data, black offenders received the highest ACSL (27 months). This is around 4 months higher than the ACSL white offenders received covering the same period (23 months). It is unclear, however, what would be driving this difference, and whether it is tied to the introduction of the Threats to kill guideline.

Conclusion

The Council have discussed the main findings of the evaluation and concluded that no major changes to the guidelines were necessary. However, it has decided to consult on potentially adding wording regarding some observed differences between demographic groups in the Threats to kill guideline.