

Consultation Stage Resource Assessment: Intimidatory Offences and Overarching Principles: Domestic Abuse

1 INTRODUCTION

1.1 This document fulfils the Council's statutory duty to produce a resource assessment which considers the likely effect of its guidelines on the resources required for the provision of prison places, probation and youth justice services.¹

2 RATIONALE AND OBJECTIVES FOR NEW GUIDELINE

2.1 In May 2008, the SGC published *Magistrates' Court Sentencing Guidelines* (MCSG), covering most of the offences regularly going before a magistrates' court. These included the offences of harassment (putting people in fear of violence) harassment (without violence), racially or religiously aggravated harassment (putting people in fear of violence), racially or religiously aggravated harassment (non-violent) and threats to kill. The MCSG only apply to sentences passed at the magistrates' court, and so there are no existing guidelines for these offences for use in the Crown Court. The Council is proposing new sentencing guidelines for these offences, for use at all courts.

2.2 The Council is also proposing guidelines for a number of new offences that have come into force in recent years:

- Several offences related to stalking that came into force in November 2012 as part of The Protection of Freedoms Act 2012;
- The offence of disclosing private sexual images (often termed "revenge porn") which came into force in April 2015 as part of the Criminal Justice and Courts Act 2015;
- The offence of controlling or coercive behaviour in an intimate or family relationship, which came into force in December 2015 under the Serious Crime Act 2015.

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

2.3 The offences related to harassment, stalking, threats to kill, disclosing private images and controlling or coercive behaviour have therefore been brought together to form a new package of Intimidatory Offences guidelines.

2.4 In 2006, the Sentencing Guidelines Council (SGC), the predecessor body to the Sentencing Council, published the definitive guideline *Overarching Principles – Domestic Violence*. The Council took the decision to revise this guidance to reflect the important changes in terminology, expert thinking and societal attitudes over the last ten years, in this important area of sentencing. ‘Domestic abuse’ is now the term used, rather than ‘domestic violence’, to reflect that both physical violence and controlling and coercive behaviour constitute abuse in domestic settings. The proposed new guideline is therefore titled *Overarching Principles – Domestic Abuse*.

3 SCOPE

3.1 This resource assessment covers the following offences:

- Harassment;
- Harassment (putting people in fear of violence);
- Stalking;
- Stalking (involving fear of violence or serious alarm or distress);
- Racially or religiously aggravated harassment and stalking offences;
- Threats to kill;
- Disclosing private sexual images;
- Controlling or coercive behaviour in an intimate or family relationship; and,
- Other offences involving domestic abuse.

4 CURRENT SENTENCING PRACTICE

4.1 Simple statistics are provided in this section to give an indication of the volume of intimidatory offences and the sentences received. A more detailed breakdown has

been published on the Sentencing Council website in a separate bulletin.² Detailed sentencing statistics for offences involving domestic abuse are not available, as there is no specific offence of domestic abuse³. Many different criminal offences can involve domestic abuse, but these offences are recorded under more generic criminal offence types (for example, common assault) and therefore it is not possible to identify which offences within the MoJ Court Proceedings Database are related to domestic abuse. Instead, a summary of domestic abuse statistics from other sources is presented below, although this includes only limited information on sentencing and concentrates more on the prevalence of domestic abuse in society and within other parts of the criminal justice system.

Harassment offences

4.2 The number of offenders sentenced for the offence of harassment without violence has increased over the last decade, from around 3,300 in 2005 to 5,400 in 2015. Community sentences were the most common sentencing outcome, with 43 per cent of offenders sentenced to community sentences for this offence in 2015. Only around 10 per cent of offenders were given an immediate custodial sentence, with an average (mean) custodial sentence length of 3 months.

4.3 The number of offenders sentenced for the more serious offence of harassment with fear of violence has increased year-on-year in recent years, from around 520 in 2012 to 810 in 2015. Custodial sentences were the most common outcome in 2015, with 35 per cent of offenders given suspended sentences, and 34 per cent sentenced to immediate custody (with an average (mean) custodial sentence length of 10 months).

Stalking offences

4.4 Since coming into force in November 2012, the number of offenders sentenced for stalking offences has increased. The majority of sentences (64 per cent in 2015) are for stalking without fear/alarm or distress. Community orders are the most frequently used sentence for stalking for these types of offences (37 per cent in 2015) followed by suspended sentence orders (29 per cent). The average (mean) custodial sentence

² The intimidatory offences statistical bulletin can be found here: <http://www.sentencingcouncil.org.uk/publications/?type=publications&s=&cat=statistical-bulletin&topic=&year>

³ The offence of 'controlling or coercive behaviour in an intimate or family relationship' is the only offence that relates directly to domestic abuse.

length for those sentenced to immediate custody has consistently been 3 months since the first sentences were given.

4.5 For stalking involving fear of violence or serious alarm/distress, suspended sentence orders were the most frequently used sentence outcome (42 per cent in 2015) followed by immediate custodial sentences (31 per cent). The average (mean) custodial sentence length for those sentenced to immediate custody was 14 months in 2015. This represents an increase from 10 months in 2013 and 11 months in 2014.

Racially or religiously aggravated harassment and stalking offences

4.6 Since 2005, the number of racially or religiously aggravated harassment and stalking offences has been steadily increasing.

4.7 For the offence without violence, the most common sentence in 2015 was a community sentence, comprising 36 per cent of offenders sentenced. For the 13 per cent who received immediate custodial sentences in 2015, their average (mean) custodial sentence length was 5 months.

4.8 For the offence of putting people in fear of violence, the numbers sentenced each year are low and therefore outcomes fluctuate over time. Over the past five years (2011 - 2015), there has been a fairly even split between immediate custody (31 per cent) and community sentences (29 per cent), with a further 24 per cent receiving suspended sentence orders. The average (mean) custodial sentence length over this period was 8 months.

Threats to kill

4.9 Since 2005 there have been around 400-500 offenders per year sentenced for threats to kill. The majority are given immediate custodial sentences (51 per cent in 2015), followed by suspended sentence orders (30 per cent). The average (mean) custodial sentence length for those who received an immediate custodial sentence was 17 months in 2015.

Disclosing private sexual images

4.10 The offence of disclosing private sexual images (often referred to as “revenge porn”) came into force on 13th April 2015.

4.11 In 2015, 60 offenders were sentenced for disclosing private sexual photographs and films. Community sentences are the most frequently used outcome (37 per cent in 2015), with 29 per cent receiving suspended orders, and 26 per cent receiving

immediate custodial sentences. The average (mean) custodial sentence length for those who received an immediate custodial sentence was 5 months.

Controlling or coercive behaviour in an intimate or family relationship

4.12 The offence of controlling or coercive behaviour in an intimate or family relationship came into force in December 2015. There is not yet any data published for this offence. However, in May 2017, when the annual MoJ Criminal Justice Statistics⁴ bulletin is published, it is likely that this will contain a small number of cases and their sentencing outcomes. For the resource assessment that will accompany the definitive guideline it may therefore be possible to include some summary statistics on the first cases sentenced for this offence.

Other offences involving domestic abuse

4.13 There is very little information available covering current sentencing practice for offences involving domestic abuse. This is because there is no specific offence of domestic abuse, many different criminal offences can involve domestic abuse. Within the MoJ Court Proceedings Database (one of the main sources of information on sentencing), it is only possible to identify specific offences such as the controlling/coercive behaviour offence, and not to identify which other cases are related to domestic abuse.

4.14 However, alternative sources are available to illustrate the prevalence of domestic abuse at other stages of the criminal justice process.

4.15 The Home Office has been collecting information from the police since April 2015, on whether recorded crimes are related to domestic abuse. Crimes are 'flagged' as being 'domestic abuse related' by the police if the offence meets the government definition of domestic violence and abuse. Data for the year ending September 2016⁵ show that violence against the person crimes were the most likely to be flagged with around a third, 32 per cent (347,115), of such crimes flagged as domestic abuse. The offence group with the next highest proportion of crimes flagged as domestic abuse related was sexual offences, 13 per cent (14,059). Overall, 11% of all crimes recorded

⁴ The MoJ Criminal Justice Statistics quarterly and annual bulletins can be found here: <https://www.gov.uk/government/collections/criminal-justice-statistics-quarterly>

⁵ The Crime in England and Wales bulletin can be found here: <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/bulletins/crimeinenglandandwales/yearendingsept2016#main-points>

by the police (excluding fraud) were flagged as domestic abuse-related⁶, representing 447,950 offences.

4.16 Statistics from the Crown Prosecution Service show that there were 100,930 defendants prosecuted for domestic abuse-related offences in the year ending March 2016⁷. Three-quarters of domestic abuse-related prosecutions were successful in securing a conviction during this year (75,235 convictions in total).⁸

4.17 The Crown Court Sentencing Survey (CCSS)⁹ also included some information about sentences where domestic abuse was a feature; where a Community Domestic Violence Programme or Integrated Domestic Abuse Programme was imposed as a requirement of a suspended sentence order or community order, or where domestic abuse was considered as an aggravating factor.¹⁰

4.18 Based on CCSS data, Table 1 shows the offences that domestic abuse programmes and the aggravating factor of domestic abuse were most commonly associated with (although domestic abuse also occurs in a variety of other offences). However, it should be noted that these figures should be treated with caution, because not all Crown Court sentences are covered by the CCSS data, and not all cases related to domestic abuse would have recorded this on the CCSS forms.¹⁰

⁶ Police recorded crime data are not designated as National Statistics. The Home Office statistics cover notifiable offences only, which means that most summary offences are excluded. Recorded crime figures are therefore not directly comparable to the Ministry of Justice courts data which is the data source for the sentencing statistics included elsewhere in this resource assessment.

⁷ Figures on offences involving domestic abuse can be found in the Office for National Statistics publication '[Domestic abuse in England and Wales: year ending March 2016](#)'. This includes data on police recorded crime, charges, summonses, prosecutions, convictions and victims. CPS data are not designated as official statistics and more detail on the quality of the data can be found on the publication web page linked to above.

⁸ It should be noted that the CPS definition of domestic abuse is slightly wider than the definition used within the guideline.

⁹ 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.

¹⁰ This information wasn't specifically requested on the CCSS forms, but sentencers were able to indicate that these programmes had been imposed or that these factors had been considered by writing within free text boxes provided at relevant points on the forms. Although this relies on self recording by sentencers, the information that has been completed does give some general information on sentences with elements of domestic abuse.

Table 1 – Crown Court Sentencing Survey forms where sentences included a domestic abuse programme or where domestic abuse was recorded as an aggravating factor, 2014

Offence	Total CCSS forms returned for this offence in 2014	Number of forms with DA indicated	Prevalence of DA
Actual Bodily Harm (ABH)	4,280	150	3%
Common assault	1,220	60	5%
Grievous Bodily Harm (GBH)	2,500	40	1%
Breach of protective order	910	30	3%
Harassment	440	20	4%
Affray	2,110	20	1%
Threats to kill	210	10	6%

Numbers in this table have been rounded to the nearest 10.

5 KEY ASSUMPTIONS

5.1 To estimate the resource effect of a new guideline, an assessment is required of how it will affect aggregate sentencing behaviour. This assessment is based on the objectives of the new guideline, and draws upon analytical and research work undertaken during guideline development. However, strong assumptions must be made, 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 new guidelines are therefore subject to a large degree of uncertainty.

5.2 Historical data on changes in sentencing practice following the publication of guidelines can help inform these assumptions, but since each guideline is different, there is no strong evidence base on which to ground assumptions about behavioural change. The assumptions thus have to be based on careful analysis of how current sentencing practice corresponds to the guideline ranges presented in the proposed new guideline, and an assessment of the effects of changes to the structure and wording of the guideline where a previous guideline existed.

5.3 The resource impact of the new guidelines is measured in terms of the change in sentencing practice that is expected to occur as a result of them. Any future changes

in sentencing practice which are unrelated to the publication of the new guidelines are therefore not included in the estimates.

5.4 In developing sentence levels for the intimidatory offences guidelines, data, where available, on current sentence levels has been considered. For intimidatory offences and domestic abuse, current guidance, transcripts of cases and news articles have also been reviewed.

5.5 However, while data exists on the number of offenders sentenced for intimidatory offences and the sentences imposed, it is difficult to establish how current cases would be categorised across the levels of culpability and harm proposed in the new guidelines, due to a lack of data available regarding the categories of seriousness of current cases. As a consequence it is difficult to ascertain how sentence levels may change under the new guidelines. This issue is even greater for offences involving domestic abuse, as no detailed sentencing data is available on which to base the guideline.

5.6 It therefore remains difficult to estimate with any precision the impact the guidelines may have on prison and probation resources. To support the development of the guideline and mitigate the risk of the guideline having an unintended impact, interviews will be undertaken with sentencers as part of the consultation, which will provide more information on which to base the final resource assessment accompanying the definitive guideline.

6 RESOURCE IMPACTS

This section should be read in conjunction with the draft guidelines available at: <http://www.sentencingcouncil.org.uk/consultations/>.

Summary

6.1 The expected impact of each guideline is provided in detail below, but as a summary, the following effects are anticipated:

- Harassment (without violence) and stalking – no impact expected;
- Harassment (putting people in fear of violence), stalking (involving fear of violence or serious alarm or distress) and racially or religiously aggravated harassment and stalking offences - no impact expected. A small number of offenders falling in the highest category of seriousness are likely to receive higher sentences as a result of new legislation that has doubled the statutory

maximum, but any increase as a result of this would not be attributable to the guideline;

- Threats to kill, disclosing private sexual images and films with intent to cause distress, and controlling or coercive behaviour in an intimate or family relationship – no impact expected;
- Other offences involving domestic abuse – difficult to assess without information on current sentencing practice, but generally no impact expected. However, research conducted as part of the consultation process should help to provide more conclusive evidence of the anticipated resource impact.

Harassment (without violence)

6.2 The new guideline aims to improve consistency of sentencing but not to cause changes in the use of disposal types.

6.3 The existing Sentencing Guideline Council's MCSG guideline for harassment (without violence) contains three categories of seriousness reflecting the 'nature of activity'. The proposed new guideline adopts the Sentencing Council's standard approach and applies to all courts. It is based on three levels of harm and three levels of culpability.

6.4 The proposed sentencing ranges have been set with current sentencing practice in mind and therefore it is not anticipated that there will be any impact on prison and probation resources.

Harassment (putting people in fear of violence)

6.5 The existing Sentencing Guideline Council's MCSG guideline for harassment (putting people in fear of violence) contains three categories of seriousness reflecting the 'nature of activity'. For offences that fall into the highest level of seriousness (where the offender made sexual threats or where a vulnerable person was targeted) the existing guideline advises the sentencer to send the offender to the Crown Court for sentencing. The proposed new guideline is for use at all courts and so is more prescriptive for sentencing the most serious offences.

6.6 In general, the proposed sentencing ranges have been set with current sentencing practice in mind and therefore it is not anticipated that there will be any impact on prison and probation resources in the majority of cases. The exception to this is for the most serious cases. New legislation came into force as part of the Police

and Crime Bill 2017, which doubles the statutory maximum for this offence, from five to ten years in custody.

6.7 To reflect the increased sentences at the top end, a new 'very high culpability' level has been added. The increase above the previous maximum of five years is contained within one box, A1, and gives a sentencing range up to eight years, allowing some 'headroom' to the maximum available of ten years. It is expected that only the most serious cases of harassment will fall within this box.

6.8 It is not possible to accurately identify the proportion of cases that this will apply to. However, any impact on prison or probation services as a result of this is expected to be due to the legislative change and not as a result of the guideline, and so it is anticipated that the guideline itself will have no impact.

6.9 There is a risk that the higher statutory maximum will cause sentencers to sentence this offence more harshly for all offenders, and not just those who have been convicted of the most serious forms of the offence, as intended. If there was any such impact then this would be due to the legislative change and not as a result of the guideline. However, this risk is mitigated by the fact that the guideline has been produced in a way that should make it clear to sentencers that only the most serious offences should fall within the range that includes the new higher maximum, and so this impact is not anticipated.

Stalking

6.10 While this is the first time that a guideline has been produced for stalking (without violence), there is an expectation that the existing harassment guideline has been widely used when sentencing this offence (this hypothesis will be tested as part of research with sentencers during the consultation process).

6.11 However, although offenders sentenced for this offence receive a similar range of sentences to those sentenced for harassment, sentences for stalking are generally slightly higher, with a higher proportion of offenders sentenced to immediate custody for stalking (12 per cent for stalking compared to 10 per cent for harassment in 2015), and average (mean) custodial sentence lengths generally higher for stalking (3.4 months compared to 2.6 months in 2015).

6.12 The Council anticipates that the new guideline will improve consistency of sentencing but not cause any changes to average sentencing severity, as the guideline has been based on current sentencing practice (although offenders sentenced for

stalking will continue to receive slightly higher sentences, these sentences will still fall within the sentencing ranges provided within the guideline). Therefore, there is not expected to be any impact on prison and probation resources.

Stalking (involving fear of violence or serious alarm or distress)

6.13 As with the stalking (without violence) offence, while this is the first time that a guideline has been produced for stalking (involving fear of violence or serious alarm or distress), there is an expectation that the existing harassment (with fear of violence) guideline has been widely used when sentencing this offence. Within the proposed new guidelines, harassment and stalking (involving fear of violence) are grouped together within one guideline.

6.14 In general, the Council anticipates that the new guideline will improve consistency of sentencing but not cause any changes to average sentencing severity for the majority of cases, as the guideline has been based on current sentencing practice.

6.15 However, this offence of stalking (involving fear of violence or serious alarm or distress) is covered by the new legislation under the Police and Crime Bill, increasing the statutory maximum from five to ten years in custody. In the same way as for harassment (with fear of violence), it is expected that a small number of offenders would now fall into the highest culpability and harm box (A1) and therefore be given a higher sentence than previously. The same risk as for harassment applies here for stalking: that sentencers may interpret the higher maximum as a requirement to sentence all offenders more harshly for this offence, but the guideline mitigates this risk by clearly explaining that only the most serious offences should fall within the highest culpability box.

6.16 Any impact on prison or probation services as a result of this is expected to be due to the legislative change and not as a result of the guideline, and so it is anticipated that the guideline itself will have no impact.

Racially or religiously aggravated harassment and stalking offences

6.17 The racially or religiously aggravated versions of each of the four offences described above are covered within the same proposed guidelines as the basic offences, but with additional provisions for the elements of aggravation.

6.18 Sentencers are first asked to sentence the basic offence, and then make an addition to the sentence considering the level of aggravation involved. This is a similar process to that used within the existing MCSG harassment guidelines, but as there was no previous guideline available for use in the Crown Court, the proposed new guideline is more prescriptive for the more serious offences.

6.19 Far fewer offenders are sentenced each year for the racially or religiously aggravated offences than for the basic offences. In 2015, 180 offenders were sentenced in total for the racially or religiously aggravated harassment or stalking offences, compared to 6,800 offenders in total for the basic offences. It is not possible to separate the harassment offences from the stalking offences within the data, and so it is difficult to estimate the impact that the guidelines may have on sentencing for the individual offences.

6.20 However, the guidelines have been set with current sentencing practice in mind, and so in general, there is not expected to be any impact on prison or probation resources in most cases. It should be noted that knowledge of current sentencing practice was based on the small number of offenders sentenced for these offences, but research with sentencers to be conducted during the consultation phase will help to inform the definitive guideline and the final version of the resource assessment.

6.21 As with the basic offences, the new Police and Crime Bill has doubled the statutory maximum for these offences (from seven to fourteen years in custody), but for the same reasons as described for the basic offences, any impact on prison or probation services as a result of this increase in sentences is expected to be due to the legislative change and not as a result of the guideline. Therefore, it is anticipated that the guideline itself will have no impact.

Threats to kill

6.22 The existing magistrates' court sentencing guideline for threats to kill has three levels of seriousness based on the 'nature of activity'. The proposed new guideline for threats to kill follows the Council's standard approach, with three levels of culpability and three levels of harm.

6.23 For offences that fall into the highest level of seriousness (where the offender made repeated threats and where there was a visible weapon) the existing guideline advises the sentencer to send the offender to the Crown Court for sentencing. The

proposed new guideline is for use at all courts and so is more prescriptive for sentencing the most serious offences.

6.24 The proposed sentencing ranges have been set with current sentencing practice in mind and therefore it is not anticipated that there will be any impact on prison and probation resources.

Disclosing private sexual images

6.25 This offence came into force on 13th April 2015. There were 60 offenders sentenced for this offence in 2015.

6.26 The guideline has been produced with the aim of maintaining current sentencing practice, and so there is not expected to be any impact on prison or probation services. However, since the Council's knowledge of current sentencing practice is based on the small number of cases sentenced so far, it is possible that these cases are not representative. If this is the case, then there may be an increase or decrease in sentencing severity following the introduction of the guideline, but it is expected that the risk of this is small. When the definitive guideline and final resource assessment are published, a full year of sentencing data for 2016 will be available and so we can mitigate this risk somewhat by taking account of the additional data at this stage.

Controlling or coercive behaviour in an intimate or family relationship

6.27 This offence came into force on 29th December 2015. Only a small number of cases have so far been sentenced, so the guideline has been developed based on analysis of sentencing remarks and media transcripts of cases, and discussions with judges who have sentenced cases.

6.28 Sentencing data covering the whole of 2016 will be published in time to inform the definitive version of the guideline, and will be included in the final resource assessment. Research with sentencers will be carried out during the consultation phase and the results of this will be used alongside the additional data to better inform the final resource impact.

6.29 As this is a new offence, any increases in the prison population are expected to be due to a gradual increase in the number of offenders sentenced under the new legislation and not due to the guideline changing sentencing practice. However, as there has only been limited evidence available to set the guideline's sentencing levels,

and the cases studied have tended to be some of the more serious forms of the offence, there is a risk that the guideline has not been based on cases that are representative of all sentencing for this offence. However, the additional information available for the definitive guideline will help to mitigate this risk.

Other offences involving domestic abuse

6.30 The existing *Overarching Principles – Domestic Violence* guideline states that: *‘As a starting point for sentence, offences committed in a domestic context should be regarded as being no less serious than offences committed in a non-domestic context.’*

6.31 In contrast, the new guideline emphasises that domestic abuse offences are regarded as particularly serious within the Criminal Justice System, and states that: *‘The domestic context of the offending behaviour makes the offending more serious...’*

6.32 This shift in emphasis may be expected to result in harsher sentencing for cases of domestic abuse. However, analysis of a limited number of transcripts suggests that domestic abuse is already taken into account in sentencing, and increases the severity of the sentence. This suggests that the draft guideline is already in line with current sentencing practice. It should be noted that only a handful of transcripts were analysed, and so this finding should be treated with caution. Further work to investigate this will be conducted during the consultation phase.

6.33 As shown earlier, a large number of offenders are convicted each year for offences related to domestic abuse, and so any impact that the guideline may have on increasing sentencing severity could result in a substantial cumulative effect on prison places and probation resources. However, as described above, it is expected that sentencing practice is already in line with the draft guideline and therefore no impact is anticipated.

6.34 The Council’s intention behind the revised guideline is to ensure that courts identify and treat cases involving domestic abuse seriously and factor it in to all relevant sentencing decisions, in a consistent manner across the court system. It is not the Council’s intention to increase sentencing severity or change sentencing practice. Research with sentencers and analysis of additional transcripts will be conducted during the consultation phase in order to understand the likely effect of the guideline, and the final resource assessment will include a summary of this research when presenting the final estimated impact.

7 RISKS

7.1 Two main risks have been identified:

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

7.2 An important input into developing sentencing guidelines is an assessment of current sentencing practice. The Council uses this assessment as a basis to consider whether current sentencing levels 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 comes into effect. This is a bigger risk for the newer offences (the coercive/ controlling behaviour offence, and disclosing private sexual images) where only very limited information has been available on current sentencing practice.

7.3 This risk is mitigated by information that is gathered by the Council as part of the guideline development and consultation phase. This includes providing case scenarios as part of the consultation exercise which are intended to test whether the guideline has the intended effect, and inviting views on the guideline. Case scenarios will also be provided to sentencers to test their understanding and use of the guideline. However, there are limitations on the number of factual scenarios which can be explored, so the risk cannot be fully eliminated.

7.4 The risk is also mitigated by the collection and analysis of sentencing information from courts. By comparing sentence outcomes to those that may result from the new guideline, it is possible to detect and amend problematic areas of the proposed new guideline.

Risk 2: Sentencers do not interpret the new guidelines as intended

7.5 If sentencers do not interpret the guidelines as intended, this could cause a change in the average (mean) severity of sentencing, with associated resource effects (including the potential for anticipated changes to some categories of the guidelines to affect other categories where no change was intended).

7.6 The Council takes a number of precautions in issuing new guidelines to try to ensure that judges interpret them as intended. Sentencing ranges are agreed on by considering sentencing data in conjunction with Council members' experience of sentencing.

7.7 Following the release of the guidelines, explanatory material will be provided to read alongside the guidelines; consultees can also feedback their views of the likely

effect of the guidelines, and whether this differs from the effects set out in the consultation stage resource assessment. The Council also uses data from the Ministry of Justice to monitor the effects of its guidelines to ensure any divergence from its aims is identified as quickly as possible.