Assessing the impact and implementation of the 2017 update to the Sentencing Council's Magistrates' Court Sentencing Guidelines

Summary

- The Sentencing Council's *Magistrates' Court Sentencing Guidelines (MCSG)* came into force in April 2017, covering 27 offences and replacing the previous guideline produced by the Sentencing Guidelines Council (SGC) in 2008. The guideline applies to adults only.

- The aim of the guideline was for all magistrates' court sentencing guidelines to follow a single, consistent format, with a view to promoting consistency of approach. The guideline was not intended to result in significant changes to sentencing levels or existing sentencing practice.

- Analysis of data on trends in disposals over time were used to assess the impact of selected *MCSG* offences on sentence outcomes. For 16 out of the 19 offences considered, the guideline did not appear to have an impact on average sentencing severity, or the guideline had the expected impact.

- For speeding, the guideline appeared to increase the average (median) fine value, as expected, from £180 before the guideline came into force, to £210 afterwards.

- For TV licence payment evasion, the guideline appeared to increase the use of conditional discharges as expected, from comprising 0.1 per cent of offenders sentenced before the guideline came into force, to 0.5 per cent afterwards.

- For communication network offences, the impact of the guideline was expected to be minimal. Courts data suggests that sentence outcomes were very similar before and after the guideline came into force, therefore the guideline does not appear to have had an impact on average sentences.

- For driving whilst disqualified, the guideline was not expected to have an impact on average sentencing severity. However, sentencing severity appeared to decrease after the guideline came into force, with a small increase in the use of fines and a small decrease in the use of suspended sentence orders. It is possible that the guideline contributed to this change, however it is also possible that factors unrelated to the guideline may have caused this change.

- For failure to provide a specimen for analysis (drive/ attempt to drive) and failure to stop/ report a road accident, there appeared to be an increase to sentencing severity after the guideline came into force, with a shift from fines to community orders. These changes may be attributable to the guideline.

- The Council has considered this analysis, and because any unanticipated changes are small, it is content that the guideline is working well. The guideline will continue to be monitored over time.

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. The first stage of the revision to *Magistrates' Court Sentencing Guidelines (MCSG)* came into force in April 2017. It replaced the previous guideline produced by the Sentencing Guidelines Council (SGC) in 2008 and covers 27 offences:

- **Alcohol sale offences** - *Licensing Act 2003, s.141; s.146; s.147*

- **Animal cruelty** - *Animal Welfare Act 2006, s.4, s.8 and s.9*

- **Careless driving (drive without due care and attention)** - *Road Traffic Act 1988, s.3*

- **Communication network offences** - *Communications Act 2003, s.127(1)*

- **Communication network offences** - *Communications Act 2003, s.127(2)*

- **Drive whilst disqualified** - *Road Traffic Act 1988, s.103*

- **Drugs – fail to attend/ remain for initial assessment** - *Drugs Act 2005, s.12*

- **Drugs – fail/ refuse to provide a sample** - *Police and Criminal Evidence Act 1984, s.63B*

- **Drunk and disorderly in a public place** - *Criminal Justice Act 1967, s.91*

- **Excess alcohol (drive/ attempt to drive)** - *Road Traffic Act 1988, s.5(1)(a)*

- **Excess alcohol (in charge)** - *Road Traffic Act 1988, s.5(1)(b)*

- **Fail to provide specimen for analysis (drive/ attempt to drive)** - *Road Traffic Act 1988, s.7(6)*

- **Fail to provide specimen for analysis (in charge)** - *Road Traffic Act 1988, s.7(6)*

- **Fail to stop/ report road accident** - *Road Traffic Act 1988, s.170(4)*

- **Football related offences** - *Sporting Events (Control of Alcohol etc.) Act 1985, s.2(1) and s.2(2), Football Offences Act 1991, s.2, s.3 and s.4 and Criminal Justice and Public Order Act 1994, s.166*

- **No insurance** - *Road Traffic Act 1988, s.143*

- **Obstruct/ resist a police constable in execution of duty** - *Police Act 1996, s.89(2)*

- **Railway fare evasion** - *Regulation of Railways Act 1889, s.5(1) and s.5(3)*

- **School non-attendance** - *Education Act 1996, s.444(1) and s.444(1A)*

- **Sexual activity in a public lavatory** - *Sexual Offences Act 2003, s.71*

- **Speeding** - *Road Traffic Regulation Act 1984, s.89(1)*

- **Taxi touting/ soliciting for hire** - *Criminal Justice and Public Order Act 1994, s.167*

- **TV licence payment evasion** - *Communications Act 2003, s.363*

- **Unfit through drink or drugs (drive/ attempt to drive)** - *Road Traffic Act 1988, s.4(1)*

- **Unfit through drink or drugs (in charge)** - *Road Traffic Act 1988, s.4(2)*

- **Vehicle interference** - *Criminal Attempts Act 1981, s.9*

- **Vehicle taking, without consent** - *Theft Act 1968, s.12.*

One difference between the current and previous guideline was a change in format. The SGC guidelines did not use the stepped approach[1]; seriousness was indicated by reference to examples of the nature of the activity and sentencers were asked to consider which of the examples corresponded most closely to the circumstances of the particular case being sentenced in order to identify the appropriate starting point. Secondly the sequence in which seriousness was presented, with the least serious situation being presented first, was the reverse to that in Sentencing Council guidelines, where the most serious situation is presented first. Finally, the starting points in the SGC guidelines were those for a first time offender pleading not guilty whereas in Sentencing Council guidelines the starting point applies irrespective of previous convictions. The Council's objective was for all magistrates' court sentencing guidelines to follow a single, consistent format, with a view to promoting consistency of approach.

The offences covered by the 2017 update to the MCSG are high in volume. In 2017, 484,000 adult offenders were sentenced for the offences covered by this guideline, of which 160,000 offenders were sentenced for speeding and 129,000 offenders were sentenced for TV licence evasion. The statutory maximum penalty for the offences covered by the 2017 MCSG update ranges from a Level 2 fine[2] to 6 months' custody.

One of the Sentencing Council's statutory duties under the Coroners and Justice Act 2009 is to monitor the operation and effect of its sentencing guidelines and to draw conclusions from this information.[3] Analysis was therefore undertaken to assess the impact of the guideline on sentencing outcomes. This paper describes the analysis undertaken, the findings from this, and how these findings might be interpreted.

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[1] The Sentencing Council guidelines generally adopt a stepped approach to sentencing. In step one, the court determines the offence category on the basis of the harm caused, and the culpability of the offender. Step two of the guideline sets out the starting point for the sentence and the sentencing range, with reference to the offence category. After determining the starting point, the court may adjust the sentence upwards or downwards within the sentencing range, by referring to a non-exhaustive list of aggravating and mitigating factors. The starting point applies to all offenders, with a reduction for a guilty plea being applied at a later step after the appropriate sentence has been identified.

[2] A level 2 fine has a maximum value of £500. More information on maximum fine levels can be found here: https://www.sentencingcouncil.org.uk/explanatory-material/magistrates-court/item/fines-and-financial-orders/approach-to-the-assessment-of-fines-2/9-maximum-fines/

[3] See s128 Coroners and Justice Act 2009.

Approach

The Council's resource assessments are concerned with anticipating any impact on sentencing practice that is estimated to occur as a result of the guideline, over and above any changes caused by unrelated or coincidental issues (e.g. changes in the volume and nature of offences coming before the courts). In the case of the 2017 MCSG offences, the resource assessment[4] considered seven summary offences in the MCSG where custody is included in the sentencing range. It also considered two high volume offences with a statutory maximum penalty of a fine, where small changes were made to sentencing levels/ ranges following consultation and where fines are the most common disposals.

By comparing the expected impact of the guideline with the actual impact observed in the sentencing data, the Council can determine whether the guideline is working as anticipated and decide whether any further work needs to be conducted. Where relevant, comparisons to the resource assessment will be made throughout this report.

Some other offences are also included in this assessment, but not included in the guideline resource assessment. This is because they are higher volume offences (with over 1,000 offenders sentenced each year) and therefore it was also important for the Council to monitor the impact of the guideline on these offences.

Methodology

Analysis of trend data and time series analysis

The Ministry of Justice's Court Proceedings Database (CPD) was used to produce descriptive statistics to observe the changes in the type of disposals being imposed for the different offences and the average custodial sentencing length (ACSL)[5] for each offence covered by the guideline, where available.[6] These statistics were produced for the 12 month period before the guideline was published (January to December 2016) and the 12 months after the guideline came into force (May 2017 to April 2018). This analysis covered adult offenders only (those aged 18 or over at the time of sentence), as the guideline is not applicable to sentencing children and young people.

However, analysis of trends in outcomes and ACSLs do not take account of 'normal' fluctuations in the average severity of sentencing over time due to changes in sentencing practice which are unrelated to guidelines e.g. the changing number and seriousness of cases coming before the courts, any changes in charging practice and so on. The data were therefore also used to conduct time series analyses, firstly using data from 2007 to 2017. Once data from 2018 became available, the analysis was extended to include 2018 data for offences where trends had been identified through the initial analysis.

Time series analysis allowed us to distinguish between these 'normal' fluctuations in sentencing and changes that could reasonably be attributed to the guideline, by taking

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[4] https://www.sentencingcouncil.org.uk/wp-content/uploads/Final-resource-assessment-MCSG.pdf

[5] The average custodial sentence length (ACSL) is the average (mean) sentence length for determinate custodial sentences only. This approach for calculating ACSL is consistent with that used for sentencing statistics produced by the Ministry of Justice.

[6] For two offences included in the resource assessment, the statutory maximum penalty is a fine. Therefore it is not possible to pass an immediate custodial sentence, and analysis of average fine levels was conducted rather than analysis of ACSLs.

historical trends into account. These time series models allowed us to forecast likely sentencing outcomes in the absence of the guideline and then compare this to what did happen, by seeing if the actual trend in sentencing severity was within the 'forecasted severity region' in the model. If average severity stayed within the 'forecasted severity region' when the guideline came into force, then this suggests that the guideline did not have an impact on average sentencing, whereas if average severity went outside of this region, then the guideline may have caused changes to average sentencing. Statistical software[7] was used to determine the best fitting time series model for the dependent variable of sentencing severity separately for each offence. These models were then used to produce forecasts for sentencing severity.

The type of time series models that were used required sentencing data to be comparable but the data included a mix of sentences of varying lengths and types. To enable comparability between different types of sentences, sentences were converted into a continuous 'severity scale', with scores ranging from 0 to 100, representing the full range of sentencing outcomes, from discharge (score of 0) to 20 years' custody (score of 100). However, it is acknowledged that this measure is not perfect and so should not be seen as an absolute, objective measure of sentencing severity (see annex for limitations).

Based on the available CPD data, the time series models were created to forecast the likely range of sentencing severity values for up to 20 months after the guideline came into force (May 2017 – December 2018[8]), assuming that no guideline had been issued. These forecasts are represented in the graphs presented in this report as the region between the dashed purple lines,[9] with the actual trend in sentencing severity represented by the red line. These can be compared against each other to see if the sentencing severity post-guideline sat within the forecasted region.

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[7] Statistical Package for Social Sciences (SPSS).

[8] This was the latest available data at the time the analysis was performed.

[9] On the graphs, the dashed lines show the confidence interval (also called the margin of error) of the estimate. At the 95 per cent confidence level, over many repeats of a survey under the same conditions, it is expected that the confidence interval would contain the true population value 95 times out of 100.

Overall Findings

This assessment considered 19 offences from the 2017 update of the MCSG. These offences were chosen because they were either included in the guideline resource assessment, or more than 1,000 offenders are sentenced for these offences each year. For the vast majority of offences considered, the guideline had the anticipated impact on average sentencing severity – either there was no impact as expected, or the changes expected were observed.

Table 1 below shows a summary of the impacts for each offence included in the resource assessment for this guideline. For these offences, the resource assessment included an estimate of the likely impact of the guideline on sentencing severity. As can be seen from the table, out of the nine offences considered, all but one guideline had the anticipated impact. For driving whilst disqualified, sentencing severity appeared to decrease after the guideline came into force, which was not anticipated. This was due to a small increase in the use of fines, and a small decrease in the use of suspended sentence orders. However, this change may be attributable to factors unrelated to the guideline. This offence is discussed in further detail in the offence specific findings section below.

Table 1: MCSG offences and the observed impact of the guideline on sentencing severity, for offences included in the resource assessment

Offence	Impact on sentencing severity
Speeding	Small increase in the average value of fines, as expected
TV licence payment evasion	Small increase in the use of conditional discharges, as expected
Communication Network Offences – s.127 (1)	Impact minimal, as expected
Communication Network Offences – s.127 (2)	Impact minimal, as expected
Drive whilst Disqualified	A possible decrease, not expected
Animal Cruelty	None, as expected
Excess alcohol (drive/ attempt to drive)	None, as expected
Vehicle interference	None, as expected
Vehicle taking without consent	None, as expected

Table 2 below shows the impact of the MCSG on offences that were not included in the resource assessment. These offences were considered as part of this guideline assessment because typically more than 1,000 offenders are sentenced per year for these offences, and therefore it was also important to monitor the impact of these guidelines. As can be seen from the table, for eight out of the ten offences considered, the guidelines did not appear to have an impact on average sentencing severity. For the offences of failure to

provide a specimen for analysis (drive/ attempt to drive) and failure to stop/ report a road accident, there appeared to be a slight increase in sentencing severity, with a small shift from the use of fines to the use of community orders. Again, these offences are discussed in further detail in the offence specific findings section below.

Table 2: MCSG offences and the observed impact of the guideline on sentencing severity, for offences not included in the resource assessment[10]

Offence	Impact on sentencing severity
Fail to provide specimen for analysis (drive/ attempt to drive)	Increase - fewer fines, more COs
Fail to stop/ report road accident	Increase - fewer fines, more COs
Careless driving (drive without due care and attention)	No change
Drugs – fail to attend/ remain for initial assessment	No change
Drunk and disorderly in a public place	No change
Excess alcohol (in charge)	No change
No insurance	No change
Obstruct/ resist a police constable in execution of duty	No change
Railway fare evasion	No change
School non-attendance	No change

The next section discusses the findings from this analysis in more detail. This section focuses on offences for which there was a change in sentencing severity after the guideline came into force, and offences where an impact was expected but was not observed.

Offence specific findings

Speeding

Speeding is a very high volume offence. The number of offenders sentenced generally increased from 122,000 in 2008 to 167,000 in 2015. Since then volumes have generally remained flat, with 169,000 offenders sentenced in 2018.

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[10] For the full list of the 27 offences covered by the 2017 update to the MCSG, see the introduction to this report.

Over the past decade, the vast majority (typically more than 99 per cent) of offenders sentenced for this offence received a fine. The remainder received absolute or conditional discharges, or were otherwise dealt with.[11]

The new guideline for speeding retained the same sentencing range for the middle and lower categories of offending, but changed the sentencing range for the most serious category from a Band B fine to a Band C fine.[12] This was expected to result in an increase in the value of fines for the most serious offence category.

Table 3 below shows that in the year before the guideline was published, 99.8 per cent of offenders received a fine, while 0.1 per cent received an absolute discharge, and in the year after the guideline came into force overall sentence outcomes were very similar. The average (median[13]) fine value increased, from £180 before the guideline was published to £210 after the guideline came into force.[14]

This analysis suggests that, as expected, the guideline caused a slight increase in the average value of fines.

Table 3: Sentence outcomes for Speeding[15]

Outcome	Pre	Post
Absolute discharge	0.1%	0.1%
Conditional discharge	<0.1%	<0.1%
Fine	99.8%	99.7%
Otherwise dealt with[11]	0.1%	0.1%

TV licence payment evasion

TV licence payment evasion is another very high volume offence. The number of offenders sentenced generally increased from 121,000 in 2008 to 167,000 in 2015. Since then there has been a downward trend, with 121,000 offenders sentenced in 2018.

Over the past decade, the vast majority (typically more than 99 per cent) of offenders sentenced for this offence received a fine, with the remainder of offenders mainly receiving conditional or absolute discharges.

The new guideline for TV Licence payment evasion retained the same starting point for all categories of offending, but changed the range for category 3 (lesser harm and lower culpability) offences, from a Band A fine[16] only, to include conditional discharges. It was

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[11] The category 'Otherwise dealt with' includes: one day in police cells; disqualification order; restraining order; confiscation order; travel restriction order; disqualification from driving; recommendation for deportation; compensation; and other miscellaneous disposals.

[12] The value of a Band B fine is 100% of the offender's relevant weekly income. A Band C fine is the highest level of fine available for speeding, at 150% of the offender's relevant weekly income.

[13] The median is the value which lies in the middle of a set of numbers when those numbers are placed in ascending or descending order. The median is often a more suitable measure than the mean as it is less influenced by extreme values.

[14] Average fine values have been rounded to the nearest £10.

[15] Percentages may not sum due to rounding.

[16] A Band A fine is the lowest level of fine. It has a value of 50% of the offender's relevant weekly income.

anticipated that this could result in a decrease in the number of offenders sentenced to fines in the lowest category, and an increase in the use of conditional discharges.

Table 4 below shows that in the year before the guideline was published, 99.8 per cent of offenders received a fine, while 0.1 per cent received a conditional discharge. In the year after the guideline came into force, 99.4 per cent of offenders received a fine, while 0.5 per cent received a conditional discharge.[17] The average (median[13]) fine value remained the same, at £220 before and after the guideline came into force.

This analysis suggests that, as expected, the guideline caused a slight increase in the use of conditional discharges for this offence, and the average fine value did not change.

Table 4: Sentence outcomes for TV licence payment evasion

Outcome	Pre	Post
Absolute discharge	0.1%	0.1%
Conditional discharge	0.1%	0.5%
Fine	99.8%	99.4%
Otherwise dealt with[11]	<0.1%	<0.1%

Communication network offences

The two communication network offences covered by the guideline are:

- Communications Act 2003, s.127(1) Sending grossly offensive, indecent, obscene or menacing messages;
- Communications Act 2003, s.127(2) Sending false message/ persistent use of communications network for purpose of causing annoyance, inconvenience or needless anxiety.

Around 890 offenders were sentenced for the s.127(1) offence in 2018. Overall the number of offenders sentenced for this offence has increased since 2011.[18] The number of offenders sentenced decreased from 730 in 2011 to 530 in 2013; the volumes then increased to 930 in 2015 and have generally remained between 900 and 1,000 since then.

Around 320 offenders were sentenced for the s.127(2) offence in 2018. There has been a steady decrease in the number of offenders sentenced for this offence since 2011 (480 offenders were sentenced in 2011).

Under the old guideline, there were two separate sentencing tables for the s.127(1) and s.127(2) offences. The starting points and ranges were the same for the two lowest levels of offending, while for the highest level of offending the starting point and top end of the range were higher for the s.127(2) offence than for the s.127(1) offence.[19] The new

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[17] The increase in the use of conditional discharges from 0.1 per cent to 0.5 per cent represents an increase from 210 offenders sentenced to a conditional discharge in 2016 to 610 offenders sentenced in the year after the guideline came into force.

[18] Data are not available for the separate s.127(1) and s.127(2) offences prior to 2011.

[19] The starting point for a category 1 s.127(1) offence was 6 weeks' custody, and the top end of the range was 12 weeks' custody. The figures for a category 1 s.127(2) offence were 12 week's custody and 18 weeks' custody respectively.

guideline brought the starting points and ranges for both offences into line, in one combined guideline.[20] The impact on correctional resources was anticipated to be minimal.

Figure 1 below shows an upward trend for sentencing severity for the two communication network offences combined between 2007 and 2010, while average sentencing severity remained within the forecasted severity region after the guideline came into force.

Table 5 below shows that around 37 per cent of offenders sentenced in 2016 were given a community order (CO), with 22 per cent given a fine and 15 per cent given a suspended sentence order (SSO). In the year after the guideline came into force these figures remained very similar (38 per cent for COs, 21 per cent for fines and 14 per cent for SSOs). The average custodial sentence length (ACSL[21]) remained stable at two months before and after the guideline came into force.

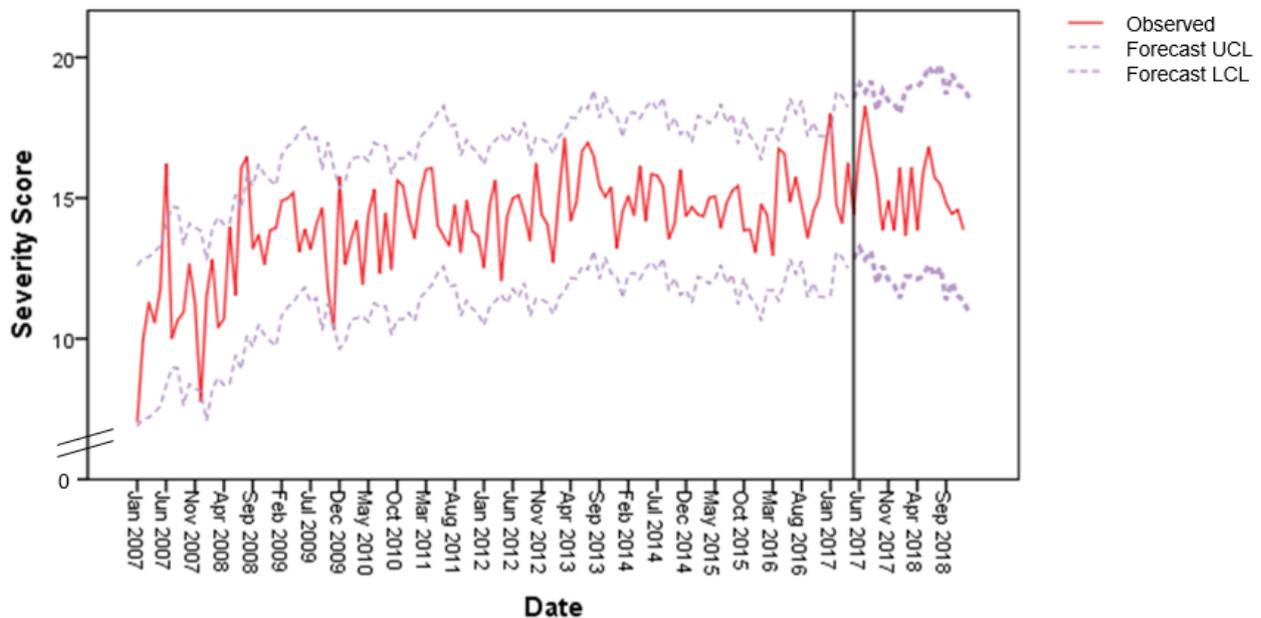**Figure 1: Sentencing severity time series analysis for communication network offences[22]**

Table 5: Sentence outcomes for communication network offences[23]

Outcome	Pre	Post
Absolute and conditional discharge	14%	13%
Fine	22%	21%
Community sentence	37%	38%
Suspended sentence	15%	14%
Immediate custody	10%	13%
Otherwise dealt with[11]	2%	2%

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[20] For section 127(1) offences the starting point and top end of the range were increased by 3 weeks to 9 weeks and 15 weeks, respectively; for section 127(2) offences the starting point and top of the range were reduced by 3 weeks to 9 weeks and 15 weeks, respectively.

[21] The average custodial sentence length (ACSL) is the average (mean) sentence length for determinate custodial sentences only. This approach for calculating ACSL is consistent with that used for sentencing statistics produced by the Ministry of Justice.

[22] The number on the vertical axes is the sentencing severity score. UCL refers to the upper 95% confidence interval limit. LCL refers to the lower 95% confidence interval limit.

[23] Percentages may not sum to 100 per cent due to rounding.

Time series analysis was also conducted for the s.127(1) and s.127(2) offences separately. The analysis suggested that average sentencing severity had not changed for these offences following the introduction of the guideline.

This analysis suggests that the guideline had a minimal effect on average sentencing severity, as expected.

Drive whilst disqualified

The number of offenders sentenced for driving whilst disqualified decreased from 15,200 in 2008 to 6,500 in 2014. Since then there has been a small upward trend, with 8,500 offenders sentenced in 2018.

For this offence, the starting points and ranges remained the same under the old and new guidelines. As the guideline was not intended to change sentencing practice, it was not anticipated to have an impact on correctional resources.

Figure 2 below shows that average sentencing severity for driving whilst disqualified generally increased in the years before the guideline came into force (2007-2016). After the guideline came into force, there was a decrease in average sentencing severity, which crossed the lower confidence limit of the forecast range. This suggests that the guideline may have decreased sentencing severity for this offence, which was not anticipated in the resource assessment.

Table 6 below shows that, in the year before the guideline was published, COs were the most frequently used disposal (comprising 31 per cent of offenders sentenced), followed by SSOs (28 per cent). Around 12 per cent of offenders received a fine. After the guideline came into force, there was a shift towards less severe disposals, with 16 per cent of offenders receiving a fine, and 24 per cent receiving an SSO. The ACSL remained stable at three months before and after the guideline came into force.

It is possible that the change in format, from examples of the nature of the activity under the old SGC guideline, to separate broader harm and culpability factors under the new guideline, may have contributed to this decrease in sentencing severity.

For example, under the old guideline, the factor at the top category of offending was 'Recently imposed ban'. Under the new guideline, 'Recently imposed ban' is a higher culpability factor, however to get into the top category of offending, the offender would also need to fall into the top category of harm, through driving a significant distance and/ or there being evidence of associated bad driving. The new guideline factors were not expected to change sentencing practice, but it is possible that they may have contributed to the slight decrease in average sentencing severity after the guideline came into force.

It is also possible that factors unrelated to the publication of the new guideline may have caused this decrease in sentencing severity. In particular, the Council is aware that in July 2017, updated advice for dealing with cases where the defendant did not attend court was issued by the Justices' Clerks' Society and the Senior District Judge. The advice stated that if the defendant did not attend court on an adjourned date then the court should disqualify, unless there were grounds from which it appeared that such a course would be contrary to the interests of justice in that case. This may have led to an increase in the number of disqualifications in absence, and therefore a greater number of offenders

convicted of driving whilst disqualified who were not aware that they were disqualified. This in turn could have led to sentencers dealing with these offenders more leniently because they had not deliberately driven whilst banned from doing so.

Figure 2: Sentencing severity time series analysis for drive whilst disqualified
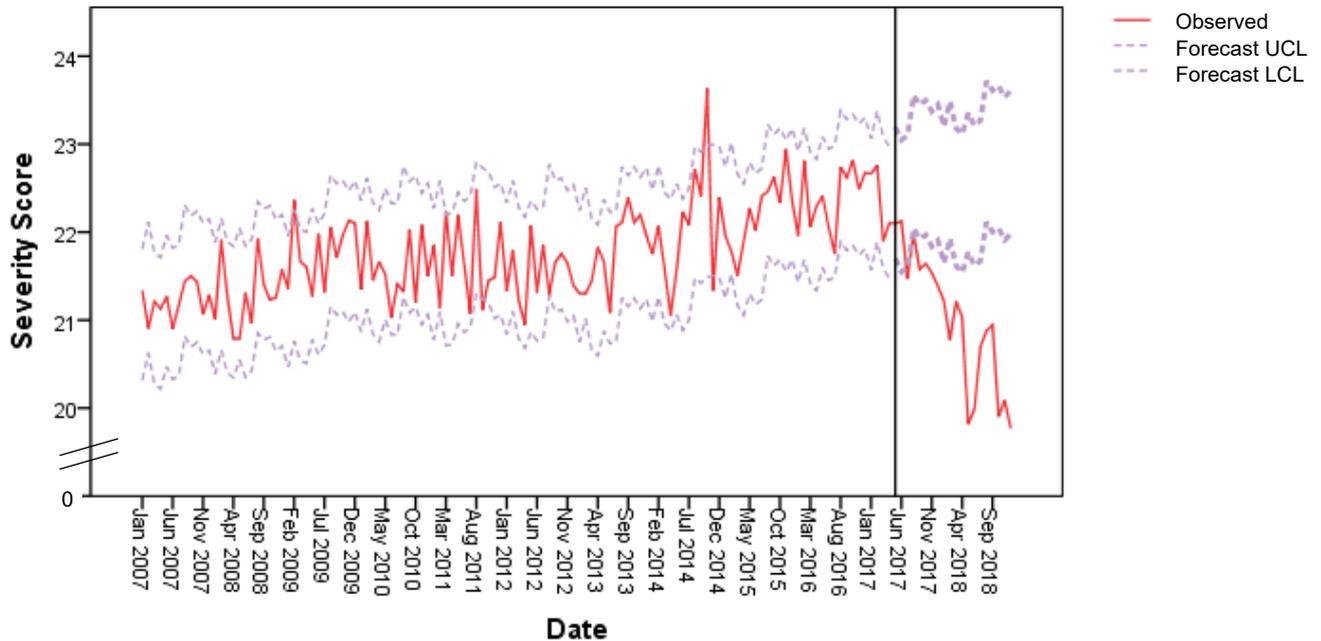

Table 6: Sentence outcomes for drive whilst disqualified

Outcome	Pre	Post
Absolute and conditional discharge	2%	2%
Fine	12%	16%
Community sentence	31%	31%
Suspended sentence	28%	24%
Immediate custody	26%	26%
Otherwise dealt with[11]	1%	1%

Fail to provide a specimen for analysis (drive/ attempt to drive)

The number of offenders sentenced for failing to provide a specimen for analysis has remained fairly stable over the last five years, with 4,900 offenders sentenced in 2013 and 5,300 offenders sentenced in 2018.[24]

For this offence, the starting point for the middle category of offending changed, from a low level community order to a high level community order. The sentencing range also increased, and the range for the lowest level of offending was broadened, from a Band C fine only, to a Band B fine to a low level community order.

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[24] Between February 2010 and April 2012, there was a sharp drop in the number of offenders sentenced for this offence, therefore the analysis for this offence uses data from May 2012 onwards.

Figure 3 below shows that average sentencing severity for failing to provide a specimen for analysis generally increased in the years before the guideline came into force (2012-2016). After the guideline came into force, there was an increase in average sentencing severity, which crossed the upper confidence limit of the forecast range. This suggests that the guideline may have increased sentencing severity for this offence.

Table 7 below shows that, in the year before the guideline was published, fines were the most frequently used disposal (comprising 63 per cent of offenders), followed by COs (21 per cent). After the guideline came into force, there was a shift towards more severe disposals, with 48 per cent of offenders receiving a fine, and 36 per cent receiving a CO. The ACSL remained stable at three months before and after the guideline came into force.

It is possible that some of the changes to starting points and sentence ranges, as outlined above, could have caused the slight shift from fines to COs.

Figure 3: Sentencing severity time series analysis for fail to provide a specimen for analysis (drive/ attempt to drive)
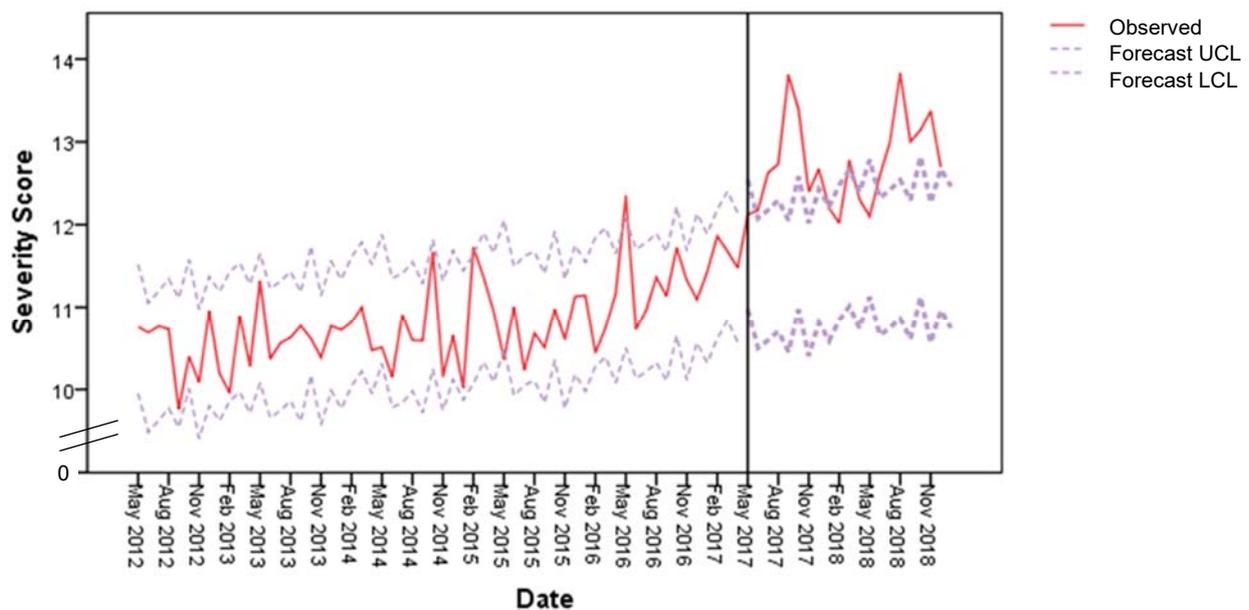

Table 7: Sentence outcomes for fail to provide a specimen for analysis (drive/ attempt to drive)

Outcome	Pre	Post
Absolute and conditional discharge	0.3%	0.4%
Fine	63%	48%
Community sentence	21%	36%
Suspended sentence	9%	10%
Immediate custody	4%	4%
Otherwise dealt with[11]	1%	1%

Fail to stop/ report road accident

The number of offenders sentenced for failing to stop/ report a road accident increased from 4,200 offenders sentenced in 2008 to 5,500 offenders sentenced in 2009. Since then,

the number of offenders sentenced has decreased (2,900 offenders were sentenced in 2018).

For this offence, the sentencing range for the middle category of offending broadened under the new guideline, from a Band C fine only, to a Band B fine to a low level community order.

Figure 4 below shows that average sentencing severity for failing to stop/ report a road accident generally increased in the years before the guideline came into force (2007-2016). There is tentative evidence that the guideline may have increased average sentencing severity for this offence as the increase crossed the upper confidence limit of the forecast range in several months after the guideline came into force.

Table 8 below shows that, in the year before the guideline was published, fines were the most frequently used disposal (comprising 84 per cent of offenders sentenced), followed by COs (9 per cent). After the guideline came into force, there was a shift towards more severe disposals, with 79 per cent of offenders receiving a fine, and 14 per cent receiving a CO. The ACSL remained stable at three months before and after the guideline came into force.

It is possible that the change to the sentence range for the middle category of offending, which used to be a fine only but now includes a CO, could have caused the slight shift from fines to COs.

Figure 4: Sentencing severity time series analysis for fail to stop/report a road accident
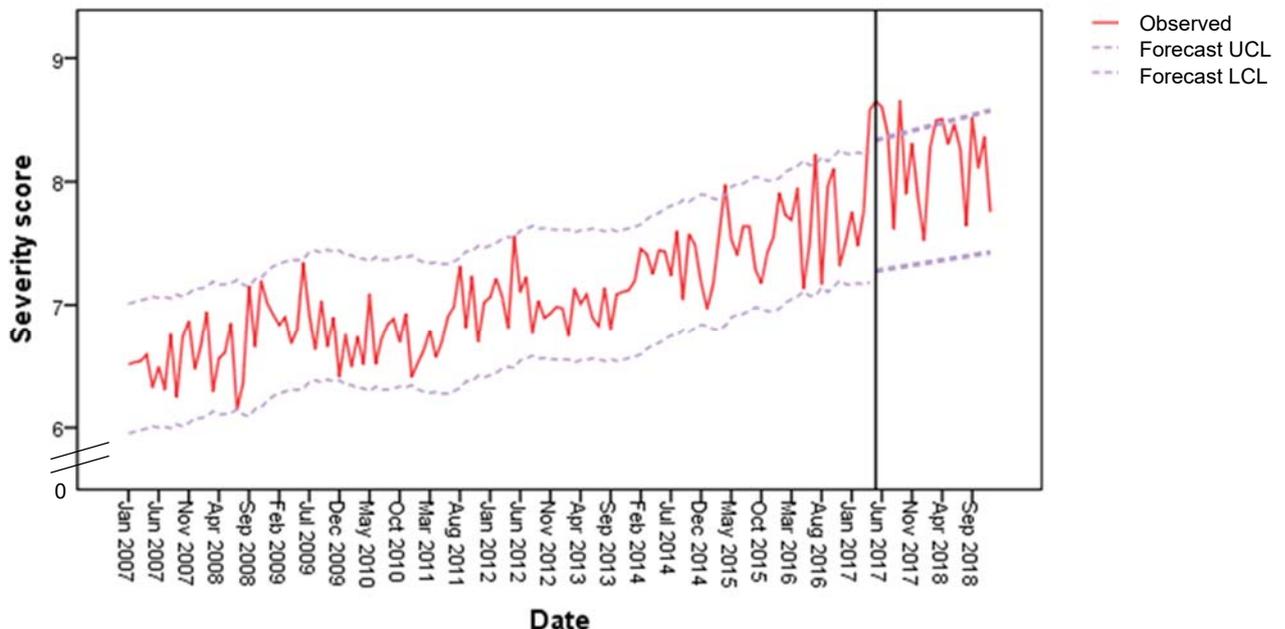
Table 8: Sentence outcomes for fail to stop/report a road accident

Outcome	Pre	Post
Absolute and conditional discharge	1%	1%
Fine	84%	79%
Community sentence	9%	14%
Suspended sentence	3%	3%
Immediate custody	1%	1%
Otherwise dealt with[11]	1%	1%

Conclusion

The analysis undertaken as part of this exercise has enabled an assessment of the impact of the Sentencing Council's 2017 update to the *Magistrates' Court Sentencing Guidelines.*

The findings suggest that the guideline is having the anticipated impact for the vast majority of offences considered. For most offences, the guideline has had no impact on average sentencing severity, while for most other offences the expected impact has been observed.

For driving whilst disqualified, failure to provide a specimen for analysis and failure to stop/ report a road accident, the guideline may have caused changes to average severity. However, the impacts of these changes have been relatively small, involving small shifts in the use of fines, community orders and suspended sentence orders. The guideline does not appear to have had an impact on the use of immediate custody, or average sentence lengths.

The Council has considered this analysis and is content that the guideline is working well. The guideline will continue to be monitored over time.

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Annex

Quantitative method: technical annex

Severity scale

The severity scale provides a useful method for combining several different sentencing trends within one measure. However, it has some limitations that should be taken into account when interpreting findings. The scale does not incorporate detailed information for all sentencing outcomes; for example, different levels of community orders and different fine amounts/bands are not part of the scale, meaning that changes within these outcomes are not visible using the scale. Also, the scale may mask different trends that happen at the same time: for example, a small shift in the use of fines towards the use of discharges, and a simultaneous shift from suspended sentence orders to immediate custody may, when the average severity is calculated, appear as no change at all (i.e. they may cancel each other out). However, when monitoring the effects of a guideline, the Council ensures that individual trends in sentencing are explored, where data are available, and so although changes such as this may not be visible using the scale, they are still observed and studied in other parts of the analysis. An external academic project[25] is currently under way to develop a new severity scale that takes into account more sentencing information, and it is expected that this scale will be used in future guideline evaluations once completed.

Time series

The time series analysis takes account of pre-guideline trends in forecasting where we might expect sentencing to sit, post-guideline. However, it does not take account of new trends post guideline, so if, for example, case mix changed coincidentally after guideline implementation, this would not be accounted for. For this reason, our analysis tends to focus on the point of guideline implementation and the months immediately after, when we can be fairly confident that there was no *other* external factor that affected sentencing nationwide (although a coincidental, sharp change in case mix cannot be ruled out).

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[25] Pina-Sánchez, Gosling and Geneletti (2018) *Tackling Selection Bias in Sentencing Data Analysis: A New Approach Based on Mixture Models, Expert Elicitation Techniques, and Bayesian Statistics*. Available at: https://www.ncrm.ac.uk/research/SentencingData/