Sentencing Council

Overarching Principles: Sentencing Offenders with Mental Health Conditions or Disorders

Consultation

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Published on 09 April 2019

The consultation will end on 09 July 2019

About this consultation

To:	This consultation is open to everyone including members of the judiciary, legal practitioners and any individuals who work in or have an interest in criminal justice.
Duration:	From 09 April to 09 July 2019
Enquiries (including requests for the paper in an alternative format) to:	Office of the Sentencing Council Royal Courts of Justice (full address as below) Tel: 020 7071 5793 Email: info@sentencingcouncil.gov.uk
How to respond:	Please send your response by 09 July 2019 to: Mandy Banks Office of the Sentencing Council Room EB20 Royal Courts of Justice Strand London WC2A 2LL DX: 44450 RCJ/Strand Email: consultation@sentencingcouncil.gov.uk
Additional ways to feed in your views:	This consultation exercise is accompanied by a resource assessment, and an online questionnaire which can be found at: www.sentencingcouncil.org.uk A series of consultation meetings is also taking place. For more information, please use the “Enquiries” contact details above.
Response paper:	Following the conclusion of this consultation exercise, a response will be published at: www.sentencingcouncil.org.uk
Freedom of information:	We will treat all responses as public documents in accordance with the Freedom of Information Act and we may attribute comments and include a list of all respondents’ names in any final report we publish. If you wish to submit a confidential response, you should contact us before sending the response. PLEASE NOTE – We will disregard automatic confidentiality statements generated by an IT system. In addition, responses may be shared with the Justice Committee of the House of Commons. Our privacy notice sets out the standards that you can expect from the Sentencing Council when we request or hold personal information (personal data) about you; how you can get access to a copy of your personal data; and what you can do if you think the standards are not being met.

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Introduction

What is the Sentencing Council?

The Sentencing Council is the independent body responsible for developing sentencing guidelines which courts in England and Wales must follow when passing a sentence. The Council consults on proposed guidelines before they come into force and makes changes to the guidelines as a result of consultations.

What is this consultation about?

The Council has developed a draft guideline for courts to use when sentencing offenders with mental health conditions, neurological impairments or development disorders. The aim of the guideline is to consolidate and explain information which will assist courts to pass appropriate sentences when dealing with offenders who have either a mental health condition or disorder, neurological impairment or developmental disorder, and to promote consistency of approach in sentencing.

There are a wide range of mental health conditions, neurological impairments and developmental disorders. The list of conditions or disorders covered by the draft guideline are listed at Annex A in the guideline. For ease, this document does not list all the conditions covered by the guideline each time during the discussion, but refers to 'mental health conditions or disorders', but this should be taken to include all the conditions listed within Annex A.

It is important to clarify that the Council is consulting on a general approach to sentencing offenders with mental health conditions or disorders, and not on the legislation, such as the Mental Health Act (MHA)1983, for example. Legislation is a matter for Parliament and is, therefore, outside the scope of this exercise.

Background

Available evidence suggests that people in the criminal justice system are more likely to suffer from mental health problems than the general population, for example, when a survey screened prisoners on arrival at prison, 23 per cent reported that they had some prior contact with mental health services.[1] 7 per cent of the prison population is thought to have a learning disability compared with 2 per cent of the population, and while the exact number of people with autism in prison is unknown, the proportion is thought to be double that within the general population. A recent study showed that Hospitalised Head Injury (HHI) was found in 24.7 per cent of prisoners and was significantly more prevalent than found in the matched general population sample.[2]

The prevalence of offenders with these conditions coming before the courts has led to calls for a guideline for sentencing these offenders, most notably a recommendation in a

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[1] https://www.nao.org.uk/wp-content/uploads/2017/06/Mental-health-in-prisons.pdf.

[2] https://journals.plos.org/plosone/article/file?id=10.1371/journal.pone.0210427&type=printable.

report published in November by JUSTICE, entitled '*Mental Health and Fair Trial'.* There is no mental health sentencing guideline currently, and little other guidance for courts to use when sentencing offenders with any of these conditions, which can be a difficult sentencing exercise. A lack of guidance could lead to inconsistencies in the way these offenders are sentenced, and there is an increasing public and media focus on mental health and associated issues generally.

The Council therefore decided to develop a draft guideline for sentencing offenders with any of the conditions or disorders listed within Annex A, and to seek views on its proposals. At an early stage of work on the guideline, the Council discussed its proposals with interested organisations and experts, to help inform the development of the guideline, and the Council is very grateful for their time and input. The Council has endeavoured to produce guidance that provides all the necessary information to consider, without being over lengthy. The Council has also tried to balance the consideration of the rights and needs of offenders, with the protection of the public, and the recognition of the rights and needs of victims to feel safe, and to see justice done.

In developing the guideline the Council has considered relevant caselaw in the area, most notably *R. v Vowles,*[3] *R.* v *Edwards,*[4] *R. v Clarke and Cooper,*[5] and *R. v Bernard,*[6] amongst others.

Whilst developing the draft guideline, the final report by the Independent Review into the MHA was published. The Council has noted the contents of the report, and in particular the recommendations relating to the Criminal Justice System. It is the Council's understanding that the Government are considering the review's recommendations and have committed to responding to the review in due course, and that the intention remains to bring forward new mental health legislation when parliamentary time allows. The Council intends to monitor closely developments post consultation, and will update the guideline before the definitive guideline is published as necessary**.** Going forward, the majority of the detailed information on legislation is contained within annexes B and C in the guideline. Annexes A-C do not form part of the guideline, and within each it states: '*This information provided below is correct as of 09/04/2019. It does not form part of the guideline'.* After the consultation the date would then change to the date the definitive guideline is published. This approach is similar to that taken with the appendices within to the Guilty Plea guideline, the flowcharts contained there provide an illustration of the operation of the guideline when it was published in 2017, they do not form part of the actual guideline.

The Council has also noted with interest other relevant work within the Criminal Justice System, such as the Liaison and Diversion schemes that exist in many courts and police stations, which place clinical staff at police stations and courts to provide assessments and referrals to treatment and support. Also, the recent testing in five areas across the country of a Community Sentence Treatment Requirement Protocol, which was developed following concerns about the low use of treatment requirements.

During the 13 - week consultation period, views on the draft guideline will be explored with sentencers, and consultation events will be held with interested parties. Following the

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[3] R v Vowles [2015] EWCA Crim 45

[4] R v Edwards [2018] EWCA Crim 595

[5] R v Clarke and Cooper [2017] EWCA 393

[6] R. v Bernard [1997] 1 Cr. App. R (S) 135

consultation, all the responses will be considered, and a definitive guideline published. This will then be used when sentencing adult offenders.

How to give your views

The paper discusses the draft guideline section by section. You can give your views by answering the questions within each section (you do not need to respond to any questions that are not relevant to you) either by email or using the online questionnaire on the Sentencing Council website.

Applicability of the guideline

Age applicability

The Council proposes that the guideline will only apply to offenders aged 18 and over, and not for offenders under 18. This is because mental health and related issues can be substantially different in both diagnosis and impact for children and young people, so it would be difficult to adequately accommodate all the considerations for all ages within one guideline. It is proposed that instead courts should refer to the *Overarching Principles: Sentencing Children and Young People guideline* for sentencing offenders under 18 who have a mental health condition/disorder. That guideline outlines the principle that courts must have regard to any mental health problems or learning difficulties/disabilities, or brain injury, and that the approach to sentencing must be individualistic. Sections 1.11 to 1.14 are particularly relevant, a link to this guideline is below:

https://www.sentencingcouncil.org.uk/overarching-guides/magistrates-court/item/sentencing-children-and-young-people/

Question 1: Do you agree with the proposal that the draft guideline only applies to offenders aged over 18? If not, please tell us why.

Sentencing of convicted offenders only

The proposed guideline will only apply to the sentencing of convicted offenders, it will not address issues of fitness to plead or disposals for those found unfit to plead. This is because sentencing guidelines only deal with issues post conviction.

The title of the guideline

The Council gave careful thought to the name of the guideline, as it is aware of the sensitivity of language in this area, and considered a number of options before deciding on the final form of words, which it felt was the most appropriate of all the options considered. One option considered and rejected was '*Overarching Principles: 'Sentencing Offenders with mental health conditions, learning disability, developmental disorders or neurological impairments'*. This title is quite lengthy and even so does not include all the potential conditions included within Annex A that the guideline covers. Another option considered and rejected was to call it '*Overarching Principles: 'Sentencing Offenders with mental health or similar conditions',* but a number of the experts who looked at an early draft of the guideline thought that this title was confusing and unhelpful.

Question 2: Do you agree with the proposed title of the guideline? If not, please tell us why and suggest any alternatives.

Section one: General approach

Sentencing principles

Paragraphs one and two of the guideline propose general principles for sentencing in this area, that the approach to sentencing should be individualistic, as levels of impairment experienced by individuals will vary, that care should be taken to avoid making assumptions, as some conditions are not obvious, and that no adverse inference should necessarily be drawn if an offender had not previously been formally diagnosed.

Reports

Paragraph three discusses medical reports and refers to the provisions within section 157 of the Criminal Justice Act (CJA) 2003, and section 39 of the MHA, and signposts courts to the more detailed information on reports at Annex B of the guideline. Paragraph four deals with the importance of any relevant reports being forwarded to prison, to try and ensure an offender's welfare. The Criminal Procedure Rules Committee, at the Council's request, will be adding a requirement to the Criminal Procedure Rules in 2019, that sentencers should ensure that reports follow an offender to custody.

Equal Treatment Bench Book

Paragraph five notes the importance of courts ensuring that offenders can understand and participate in proceedings, to avoid the risk of misunderstandings which could lead to further offences. The paragraph notes that a useful source of information on these issues can be found at Chapter four of the Equal Treatment Bench Book (ETBB), and includes a link to the Bench Book.

As noted earlier on, the Council has read with interest the final report of the Independent Review of the Mental Health Act, and has noted that figures show people from black and minority ethnic groups are disproportionally detained under the MHA. The Council considers it important that courts are aware of relevant cultural and ethnicity considerations and offenders within a mental health context, and notes in paragraph six that useful information on these considerations can be found within Chapter eight of the ETBB.

Question 3: Do you have any comments on the proposed contents of paragraphs one to six? Do you think the information will be helpful to courts? If not, please tell us why.

Private treatment

Paragraph seven provides guidance for when offenders are to be treated outside of the NHS, in a private health setting. Generally, offenders are treated within the NHS, but when they are not, the Council felt it important to prompt courts to ensure that the proposed hospital/treatment centre has the appropriate level of security and staff able to address offending behaviour. In addition, when courts are considering making a mental health treatment requirement (MHTR), the paragraph reminds sentencers to first seek assurance that the proposed treating psychiatrist is aware of the duty to inform the court of any non-

compliance with the order. Also, there is reference to the fact that courts should in all cases consider whether a restraining order or other ancillary order may be appropriate.

Question 4: Do you have any comments on paragraph seven? Do you think the information will be helpful to courts? If not, please tell us why. Is there any further information relating to private treatment that you think should be added?

Section two: Assessing culpability

General guidance

The Council was mindful of how difficult an exercise it can be for sentencers assessing culpability for an offender who has a mental health condition or disorder, having to weigh up how much responsibility they may or may not retain for the offence, depending on their particular condition. Accordingly, the Council has given very careful thought on how to provide guidance on this issue, in order to balance all the relevant considerations appropriately. Paragraphs eight and nine give general guidance on assessing culpability, and paragraph ten provides a list of questions to assist courts in deciding the level of culpability.

Paragraph eight states that courts should refer to offence specific guidelines in conjunction with this guideline, in order to assess culpability, in a similar way to that in which courts would refer to the *Overarching Principles: Domestic Abuse Guideline,* when sentencing an offender who has committed an offence in a domestic abuse context. The paragraph also discusses the fact that if an offender has any of the conditions listed within Annex A, it may affect their level of responsibility for the offence, but that the relevance of any condition will depend on the nature, extent and effect of the condition on an individual, and whether there is a causal connection between the condition and the offence. The fact alone that an offender has a condition or disorder does not necessarily mean it will have an impact on sentencing, it is for the sentencer to decide how much responsibility an offender retains for the offence, in each individual case.

Paragraph nine notes that as there are differences in the nature and severity of conditions, and that some conditions fluctuate, it is not possible for guidance to be prescriptive in the assessment of culpability; assessments of culpability will necessarily vary between cases. Careful analysis of all the evidence is required to make the assessment of culpability which the sentencer, who alone has all the relevant information, is best placed to make. The Council believes it is important to stress that while sentencers should take all relevant expert evidence into account, sentencers must make their own decisions and not be bound by expert opinion. The paragraph goes on to give examples of when it may not be appropriate to follow expert evidence, such as when conclusions are based on incomplete analysis or a misreading of the evidence, or where experts suggest a diagnosis without a clear indication of how it affects culpability.

Question 5: Do you think the guidance within paragraphs eight and nine is helpful? Is there any of the guidance that you disagree with? If so, please tell us why you disagree with it.

Assistance in deciding the level of culpability

As noted above, paragraph ten contains a list of questions, to assist courts to decide the level of culpability. The Council developed this list of questions, shown below, after studying a number of recent Court of Appeal cases, that considered relevant issues pertaining to culpability for offenders with mental health conditions and disorders. After carefully analysing these cases, the Council concluded that providing a list of questions for the sentencer to consider was the most appropriate way to provide assistance in the assessment of culpability. It is not possible to list a series of factors that either indicate a high level or low level of culpability by an offender. In some cases a factor may indicate greater culpability, but in another case, the same factor may indicate lesser culpability, as cases are so fact specific.

An example of this might be an offender exacerbating their condition by drinking alcohol, and this being a factor in their offending. It is a relatively common situation whereby people self-medicate with alcohol to try to help cope with their condition or disorder. If an offender knew that drinking had a significant detrimental effect on their behaviour, but did so anyway, this may indicate greater culpability. However, another offender who drank may genuinely not have understood the disinhibiting effect alcohol may have on his behaviour, and so may be less culpable.

- Did the offender's condition mean it impaired their ability to exercise appropriate judgement?
- Did the offender's condition impair their ability to make rational choices, or to think clearly?
- Did the offender's condition impair their ability to understand the nature and consequences of their actions?
- Did the offender's condition have the effect of making them disinhibited?
- Were there any elements of premeditation or pre-planning in the offence, which might indicate a higher degree of culpability?
- Were there attempts to minimise their wrongdoing or to conceal their actions, which might indicate a higher degree of culpability?
- Did the offender have any insight into their illness, or did they lack insight?
- Did the offender seek help, and fail to receive appropriate treatment or care?
- If there was a lack of compliance in taking medication or following medical advice, was this influenced by the condition or not?
- If the offender exacerbated their condition by drinking/taking drugs, were they aware of the potential effects of doing so?

Question 6: Please tell us your views on the contents of paragraph ten- do you think this will be helpful to courts? If not, please tell us why and suggest any alternative approaches to assessing culpability that you think may be more appropriate.

Section three: Determining the sentence

The guidance in this section aims to provide information to assist in deciding on the appropriate sentence, and aims to present all the considerations in a balanced way, considering the need to protect the public, whilst also considering the effect of the sentence on the offender, which can be greater than the effect on an offender without a mental health condition or disorder.

Paragraph eleven discusses that although courts have a statutory requirement under section 142 of the CJA to consider all the purposes of sentencing, that statutory requirement does not apply when making a hospital order, a hospital order with restrictions, or a hospital and limitation direction. However, the Council believes that consideration of the purposes of sentencing may still be relevant in some cases.

This paragraph also highlights the importance of trying to treat the condition that may have led to the offending, as the effective treatment of their condition should help reduce further offending and so in turn protect the public.

As a guide, paragraph twelve states that where an offender's culpability was high, the sentence **may** be more weighted towards punishment, and where an offender's culpability was low, the sentence **may** be more weighted towards rehabilitation.

Paragraph 13 gives some points for courts to consider about the potential impact of the sentence on an offender given their mental health condition or disorder, as the Council is very mindful of the fact that a particular sentence could have a greater impact on an offender with a mental health condition or disorder, than it would on an offender without that condition. The Council has also noted statistics such as those by the Prison Reform Trust (PRT), who state that self-inflicted deaths are 8.6 times more likely in prison than within the general population.[7]

Paragraph 14 discusses the importance of courts in each case carefully considering the criteria for, and regime on release for offenders, as the protection of the public has to be of paramount concern to sentencers. The paragraph discusses the fact that courts should not assume that one order is better than another, or that one order offers greater protection to the public than another. Within this section there is also a brief summary of the different release regimes contained with the different orders and directions, and there is a fuller description of all the different types of disposals at Annex C of the draft guideline.

Question 7: Please tell us your views on the contents of section three - do you agree with the guidance in this section? If not, please tell us why.

[7] http://www.prisonreformtrust.org.uk/WhatWeDo/ProjectsResearch/Mentalhealth.

Section four: Sentencing disposals

The section aims to provide courts with just a brief list of what different types of disposals are available in each court- with much further detailed information on the disposals at Annex C of the draft guideline. There is also guidance for Crown Courts only on the appropriate consideration of section 45A and section 37/41 orders, which follows guidance in *Vowles* and *Edwards.*

It is a non-exhaustive list, as it focuses on the relevant disposals in a mental health context, and does not list all the available disposals, fines, discharges, and so on.

Question 8: Do you think the list of different disposals and Crown Court guidance is helpful? If not, please tell us why.

Annex A: Main classes of mental disorders and presenting features

The Council decided that it would be helpful to courts to provide some information on common mental health conditions and disorders. The information has been written by Professor Pamela Taylor, Professor of Forensic Psychiatry, Cardiff University and Chair of the Forensic Psychiatry Faculty of the Royal College of Psychiatrists, and the Council is very grateful to Professor Taylor for contributing this information. Briefly, Annex A includes:

- Developmental disorders, e.g Autism Spectrum Disorder and learning disabilities
- Psychotic illnesses, e.g schizophrenia and bipolar illness
- Non-psychotic illnesses, e.g depression, anxiety and PTSD
- Substance misuse disorder (drugs, alcohol)
- Personality disorders
- Dementia, e.g Alzheimer's disease
- Multi-morbidity and comorbidity
- Acquired brain injury
- Learning difficulties, e.g dyslexia

Question 9: What are your views on the information on common mental disorders? Do you think it is helpful? Is there information missing that you would like to see included?

Annex B: Reports

This annex provides detailed information that may be of assistance to courts when requesting reports, and includes examples of types of information that courts may wish to request within reports, as shown below:

- background/history of the condition;
- diagnosis, symptoms, treatment of the condition;
- the level of impairment due to the condition;
- how the condition relates to the offences committed;
- dangerousness;
- risk to self and others;
- if there has been a failure of compliance (e.g not attending appointments, failing to take prescribed medication) what is thought to be driving that behaviour;
- the suitability of the available disposals in a case;
- if a particular disposal is recommended, the expected length of time that might be required for treatment, and details of the regime on release/post release supervision;
- the impact of any such disposals on the offender;
- any communication difficulties and/or requirement for an intermediary;
- any other information the court considers relevant.

There is also reference to the relevant sections on reports within the Criminal Procedure Rules and Criminal Practice Directions, and a link to both those documents.

In this annex there is also a reference to section 38 of the MHA, regarding clinicians wanting to undertake an inpatient assessment, and to the power to order reports in magistrates' courts, and detailed information on section 157 of the CJA which sets out additional requirements in cases of mentally disordered offenders.

Question 10: What are your views on the information on reports within Annex B? is it helpful? Is there information missing that you would like to see included?

Annex C: Sentencing disposals

Annex C provides full detail on each of the applicable disposals available, starting with Mental Health Treatment Requirements (MHTRs). The list of disposals contained within the document is:

- MHTRs
- Section 37 MHA hospital orders
- Section 41 MHA restriction orders
- Section 45A MHA hospital and limitation direction
- Section 43 MHA committal to the Crown court
- Section 37 MHA Guardianship order

For each disposal there is a box with the key information in, with additional explanatory text below. Much of this information is available elsewhere, but the Council thought that it would be of assistance to courts if the information was collated and added to this document.

Question 11: What are your views on the information on disposals within Annex C? Is it helpful? Is there information missing that you would like to see included?

Equality and diversity

The Public Sector Equality Duty is a duty set out in section 149 of the Equality Act 2010 (the 2010 Act) which came into force on 5 April 2011. It is a legal duty which requires public authorities (and those carrying out public functions on their behalf) to have "due regard" to three "needs" or "limbs" when considering a new policy or operational proposals. Complying with the duty involves having due regard to each of the three limbs:

The first is the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited under the 2010 Act.

The second is the need to advance equality of opportunity between those who share a "protected characteristic" and those who do not.

The third is to foster good relations between those who share a "protected characteristic" and those who do not.

Under the PSED the protected characteristics are: race; sex; disability; age; sexual orientation; religion or belief; pregnancy and maternity; and gender reassignment. The protected characteristic of marriage and civil partnership is also relevant to the consideration of the first limb of the duty.

Section 149 of the Equality Act 2010 contains further detail about what is meant by advancing equality of opportunity and fostering good relations.

A range of information and evidence about the demographics of offenders with mental health issues were considered during the development of the draft guideline. For example, the Council considered findings from the recently published Independent Review of the Mental Health Act,[8] which found disproportionate rates of detention (under the Mental Health Act) for people from ethnic minorities. Further statistics on demographics relating to adult offenders and mental health conditions can be found below.

The Council's aim in developing the draft guideline has been to consolidate and explain information which will assist courts to pass appropriate sentences when dealing with offenders who have mental health conditions or disorders, and to promote consistency of approach in sentencing. The Council considers that by promoting greater consistency and transparency in the sentencing process there will be less scope for discrimination under the draft guideline, and therefore the proposed guideline is not expected to have any adverse effects on equality.

[8] https://www.gov.uk/government/publications/modernising-the-mental-health-act-final-report-from-the-independent-review

Demographics relating to adult offenders and mental health conditions

Any offender sentenced for a criminal offence may have a mental health condition, but it is not possible to identify from the MoJ Court Proceedings Database (one of the main sources of data on sentencing practice) which offenders have a mental health condition. Instead, statistics related to mental health and offenders' demographics are presented below. There are many sources of information around mental health issues and the demographics of offenders, and therefore this summary mainly focuses on statistics relating to overall levels of mental health issues, rather than focusing on specific conditions.

Liaison and diversion service statistics

Liaison and diversion (L&D) services identify people who have mental health, learning disability, substance misuse or other vulnerabilities when they first come into contact with the youth and adult criminal justice system as suspects, defendants or offenders. These services are designed to support people through the early stages of the criminal justice pathway, refer them for appropriate health or social care, or enable them to be diverted away from the criminal justice system into more appropriate settings. L&D services aim to improve health outcomes, reduce re-offending and identify vulnerabilities earlier, thus reducing the likelihood that offenders will reach crisis-point.

The MOJ's Women and the Criminal Justice System publication[9] found that higher proportions of females in contact with L&D services had mental health needs than males. In the financial year 2017/18, around 69 per cent of adult females had mental health needs compared to 61 per cent of adult males.

The MOJ's Race and the Criminal Justice System publication[10] found that, of the individuals in contact with L&D services in 2016/17, black offenders were more likely to be identified as having a mental health need than offenders from all other ethnic groups (72 per cent of black offenders were identified as having a mental health need). The proportion of white, Asian and mixed ethnic offenders identified as having a mental health need ranged between 64 per cent and 69 per cent, whilst Chinese or other offenders were the least likely to have a mental health need (58 per cent).

The Surveying Prisoner Crime Reduction cohort study

A report on the needs and characteristics of young adults in custody from the Surveying Prisoner Crime Reduction (SPCR) cohort study[11] found that offenders of all ages sentenced to custody tend to have high levels of need, although young adults (aged 18 to 20) entering custody were less likely to be assessed as suffering from both anxiety and depression (15 per cent) than adults aged 21 and over (27 per cent). A report on the needs and characteristics of older prisoners, also from the SPCR,[12] found that 11 per cent of younger prisoners (ages 18 to 49) had received treatment or counselling for mental

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[9] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/759770/women-criminal-justice-system-2017..pdf

[10] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/669094/statistics_on_race_and_the_criminal_justice_system_2016_v2.pdf

[11] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/449586/Young-adults-in-custody.pdf

[12] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/368177/needs-older-prisoners-spcr-survey.pdf

health or emotional problems in the 12 months before custody, compared to 10 per cent of older prisoners (aged 50 and over).

Hospital order statistics

The MOJ publishes statistics on the number of offenders sentenced to hospital orders (section 37 orders without section 41 restrictions).[13] These statistics are presented below, broken down by gender, age and self-identified ethnicity.

Table 1: Demographics of adult offenders sentenced to hospital orders, by gender, age and self-identified ethnicity, 2017

Gender	Number of adults sentenced to hospital orders	Proportion of adults sentenced to hospital orders
Male	284	85%
Female	49	15%
Total	**333**	**100%**

Age group	Number of adults sentenced to hospital orders	Proportion of adults sentenced to hospital orders
18 - 20	29	9%
21 - 24	48	14%
25 +	256	77%
Total	**333**	**100%**

Self-identified ethnicity[1]	Number of adults sentenced to hospital orders	Proportion of adults sentenced to hospital orders[2,3]
White	156	74%
Black	31	15%
Asian	14	7%
Mixed	6	3%

[13] Figures on hospital orders (with restrictions) and hospital and limitation directions are published in the restricted patients publication, part of the Offender Management Statistics quarterly publication: https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-october-to-december-2017

Chinese and other	4	2%
Not recorded/not known[4]	122	
Total	**333**	**100%**

Source: Court Proceedings Database, Ministry of Justice

Notes:

1) Figures for ethnicity are self-identified, which is ethnicity as defined by an individual. Categories are based on the classifications as defined by the 2001 and 2011 Census.
2) Percentage calculations do not include cases where self-identified ethnicity was unknown.
3) These percentages do not sum to 100 per cent due to rounding.
4) For 37 per cent of adults sentenced to hospital orders in 2017, their ethnicity was either not recorded or it was not known. Therefore, the proportions amongst those for whom data was provided may not reflect the demographics of the full population, and these figures should be treated with caution.

Question 12: Are there any other equality and diversity issues that you think should be addressed?

General observations

We would also like to hear any other views you have on the proposals that you have not had the opportunity to raise in response to earlier questions.

Question 13: Do you think the length of the guideline is about right or not? Is there information missing that you would like to see included?

Question 14: Do you have any further comments on the draft guideline not covered elsewhere?

Question 15: What, if any, do you think the impact of the guideline might be on sentencing practice?

Question 16: We are interested in obtaining information about the length of time that offenders spend in hospital on section 37 and section 37/41 orders - do you have any information on the average length of stay for these patients?