

Assessing the impact and implementation of the Sentencing Council's Sentencing Children and Young People Definitive Guideline

Summary

- The Sentencing Council's *Sentencing Children and Young People Definitive Guideline* came into force on 1 June 2017, replacing the *Overarching Principles – Sentencing Youths* guideline produced by the Sentencing Guidelines Council (SGC) in 2009. It also replaces the offence specific guidelines within the SGC *Robbery* guideline, published in July 2006, and within the SGC *Sexual Offences* guideline, published in April 2007. The guideline applies to those aged under 18 years of age only.
- The aim of the guideline was to provide a comprehensive and accessible document on the general principles to be applied when sentencing children and young people, and to promote a more consistent approach to sentencing. The guideline also includes new consolidated guidance for sentencing robbery and sexual offences.
- Analysis of quantitative data on trends in disposals over time were used to assess the impact of the guideline on sentence outcomes. Findings from survey data and qualitative research were used to assess the implementation of the guideline.
- Qualitative findings indicated that the guideline met its stated aims to provide a comprehensive and accessible document on the general principles. Sentencers used the guideline regularly in sentencing and found it easy to use and helpful to the sentencing process.
- Findings from a wider survey of sentencers' views on, and experiences of, using sentencing guidelines found that, when asked about their preferred guidelines, the children and young people guideline was the most frequently identified one by district judges.
- Quantitative analysis of ethnicity data, both before and after the introduction of the guideline, showed that there were higher proportions of Black and Asian children and young people receiving immediate custody, compared with White children and young people. The Council is considering what further research it could do into the disparities in sentencing outcomes and will continue to monitor outcomes for different ethnicities.
- Findings from further survey research with sentencers indicated that about one third thought the guideline had led to decreased sentencing severity, though this was not evidenced in the Council's quantitative analysis of sentencing outcomes.

- Overall, the guideline did not appear to have an impact on average sentencing severity. However, for robbery offences, there was some evidence to suggest that sentencing may have decreased for the 15 to 17 year old age group. This finding is consistent with the resource assessment published alongside the guideline, which set out that, although the aim in developing these guidelines was not to change sentencing practice, there might be a shift from custodial to community sentences for a small number of cases.
- Based on the analysis and research conducted as part of this evaluation, the Council is content that the guideline is fit for purpose and working as intended, and therefore that there is no immediate need to revisit the guideline.

Introduction

Rationale and objectives for the new guideline

The Sentencing Council was set up in 2010 and produces guidelines for use by all members of the judiciary when sentencing in criminal cases. The *Sentencing Children and Young People Definitive Guideline* came into force on 1 June 2017¹ replacing the Sentencing Guidelines Council (SGC)² *Overarching Principles – Sentencing Youths* guideline. It also replaces the specific guidelines for children and young people within its definitive robbery guideline, published in July 2006, and within its definitive guideline on the Sexual Offences Act 2003, which was published in April 2007.³ Recognising that guidelines for children and young people had become piecemeal and dated, the Council developed and issued the new guideline to replace the SGC guidelines, with the aim of providing a comprehensive and accessible document on the general principles to be applied when sentencing children and young people. The guideline applies to those aged under 18 years of age only.

The revised guideline includes updated terminology (for example, it refers to children and young people rather than youths and young offenders), as well as reflecting changes in the law that have taken place since the old guideline was produced. The changes to the law include changes to allocation (which cases are heard in which court), reduction in sentence for guilty pleas,⁴ and changes in the availability of certain sentences, such as referral orders. The Council also took the opportunity to make additional changes to the content to ensure that all aspects of sentencing are covered.

The revised guideline seeks to ensure that sentencers will look in far greater detail at the age (including emotional and developmental age as well as chronological age), background and circumstances of each child or young person in order to reach the most appropriate sentence.

Sentencing statistics and guideline development

The number of children and young people sentenced at court in England and Wales decreased by 77 per cent between 2008 and 2018, from 88,400 to 20,300.⁵ The number sentenced for robbery offences over this period also decreased from 3,500 in 2008 to 1,100 in 2018. For non-penetrative sexual offences, the number decreased from 230 to 100, while for penetrative sexual offences the numbers fluctuated between 90 and 150 offenders sentenced per year between 2008 and 2017, with 70 offenders sentenced in

¹ <https://www.sentencingcouncil.org.uk/publications/item/sentencing-children-and-young-people-definitive-guideline/>

² The SGC was the predecessor body to the Sentencing Council.

³ A separate guideline for sentencing children and young people for bladed articles and offensive weapons offences came into force on 1 June 2018 and will be the subject of a separate assessment report.

⁴ An assessment of the impact of the guilty plea section of the guideline is discussed in the separate assessment report for guilty pleas, which can be found at the following link:
<https://www.sentencingcouncil.org.uk/publications/item/reduction-in-sentence-for-a-guilty-plea-assessment-of-guideline>

⁵ Actual numbers of sentences have been rounded to the nearest 100 when more than 1,000 offenders were sentenced, and to the nearest 10 when fewer than 1,000 offenders were sentenced.

2018. The possible reasons for these decreases are outlined in the overall findings section of this report.

Research was carried out between 2012 and 2016 to inform different phases of guideline development. A summary of this research can be found in the consultation response document to the guideline.⁶ The research undertaken at various stages of guideline development helped to develop the format and detailed content of both the *Overarching Principles* and offence specific guidance for robbery and sexual offences.

As well as using research to inform guideline development, 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.⁷ Research and analysis were therefore undertaken to assess the impact and implementation of the guideline on sentencing practice and outcomes. This paper describes the analysis undertaken, the findings from this, and how these findings might be interpreted.

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 *Sentencing Children and Young People Definitive Guideline*, the resource assessment⁸ set out that the aim in developing these guidelines was not to change sentencing practice, but to make the guidelines more comprehensive, accessible and useful to sentencers and to promote a more consistent approach to sentencing.

The resource assessment noted that research with sentencers suggested that there could be a shift from custodial to community sentences for a small number of cases, though given the small number of children and young people sentenced to immediate custody, the impact of this change on correctional resources was expected to be small. 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.

The Council's *Sentencing Children and Young People Response to consultation*⁶ document set out some of the changes made to the draft guideline following the consultation. This included a change to the terminology used when referring to children and young people, inclusion of specific considerations for looked after children and Black, Asian and Minority Ethnic children and young people, additional guidance on subsequent referral orders and a revised definition of persistent offending.

⁶ <https://www.sentencingcouncil.org.uk/wp-content/uploads/Sentencing-Children-and-young-people-Response-to-consultation.pdf>

⁷ See s128 Coroners and Justice Act 2009.

⁸ <https://www.sentencingcouncil.org.uk/wp-content/uploads/Resource-Assessment-Children-and-Young-People.pdf>

Methodology

Quantitative and qualitative analysis was taken to assess the impact of the Sentencing Council's *Sentencing Children and Young People Definitive Guideline* on sentencing outcomes and whether there were any implementation issues. Time series analysis was undertaken to establish whether the observed impact was as predicted. Analysis of survey data and research interviews explored how the guideline was being construed by sentencers, to ascertain if it was being implemented as expected.

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 children and young people and the average custodial sentencing length (ACSL),⁹ in a 12 month period before the guideline came into effect (March 2016 to February 2017) and the 12 months after the guideline came into effect (June 2017 to May 2018). It includes outcomes from both the Youth Court and the Crown Court. The analysis was carried out for children and young people overall, and also for the offences of robbery and sexual offences, which have their own offence specific guidelines.

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 using data from 2008 to 2018.

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 historical trends into account and using these to predict what the future values might have been in the absence of the guideline. 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 software¹⁰ 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

⁹ The average custodial sentence length (ACSL) is the average (mean) sentence length for determinate custodial sentences only. It therefore excludes indeterminate sentences (life sentences or Imprisonment for Public Protection, IPPs). This approach for calculating ACSLs is consistent with that used for sentencing statistics produced by the Ministry of Justice. Finally, the ACSLs have been adjusted using data from the Crown Court Sentencing Survey (for further information please see: <http://www.sentencingcouncil.org.uk/analysis-and-research/crown-court-sentencing-survey/>.) to provide estimates of the sentence length *prior* to any reduction for guilty plea. These estimates allow a better assessment of the use of sentencing guidelines as the category ranges specified in the guidelines are those before any guilty plea reduction is applied.

¹⁰ Statistical Package for Social Sciences (SPSS).

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 19 months after the guideline came into force (June 2017 – December 2018),¹¹ 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,¹² 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.

The analysis also included a breakdown of sentencing outcomes over time by ethnicity, split into White, Black, Asian and Other ethnic groups. This analysis looked at proportions of children from each ethnic group, the year before and the year after the guideline came into force, as well as proportions for the different sentencing outcomes for each group.

However, there are limitations to these data, as the CPD ethnicity variable that the Council has access to is police officer-identified, whereby the offender's ethnicity is recorded by a police officer or a member of the administrative or clerical team, based on the visual appearance of the offender. Additionally, the proportion of children and young people with an unknown ethnicity has increased over time, and it is not known why this has happened.

Analysis of survey and interview data on judicial attitudes to sentencing

Data and findings from research commissioned by the Sentencing Council and carried out by Opinion Research Services (ORS) were considered.¹³ This research explored the views of sentencers within the magistracy and the judiciary about sentencing guidelines in general, and how their views may have changed over time. As part of this work, a questionnaire was available for sentencers to complete online via an email link from 4th October to 4th November 2019. All members of the magistracy and judiciary had the opportunity to take part, and a total of 1,022 questionnaires were completed. Interviews were also conducted with thirty sentencers, as well as ten interested parties (legal practitioners and representatives from government agencies and charities).

The ORS survey did not set out specifically to understand attitudes to the *Sentencing Children and Young People Definitive Guideline* and it was acknowledged that judicial attitudes could be more fully understood through research limited to this guideline. Therefore, the Council conducted further survey research, to establish whether the guideline met its stated aim, to understand how sentencers use the guideline and their attitudes to it and to explore sentencers' perception of whether the guideline has changed sentencing behaviour.

¹¹ These were the latest available data at the time the analysis was performed.

¹² 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.

¹³ The findings from this research will be published by the Council in due course.

A short survey was carried out in June 2020 and was sent to magistrates and district judges on the Sentencing Council's research 'pool'¹⁴ who had expressed an interest in taking part in research relating to the Youth Court, as well as Crown Court judges who had previously taken part in research during the development of the Council's draft guideline. A total of 60 questionnaires were completed. The majority of respondents (49 out of 60) were magistrates who sit in the Youth Court. Ten respondents were district judges and one was a Crown Court judge.

Of the magistrates and district judges, two thirds (39) had been sitting in the Youth Court for more than ten years. Only 7 per cent (4) had been sitting in the Youth Court for less than three years, and therefore may not have had experience of sentencing prior to the publication of the new guideline. Ninety per cent (53) of respondents undertook more than ten sittings per year, with 42 per cent (25) undertaking more than 20 sittings per year.

Findings on the Overarching Principles

Quantitative findings

The number of children and young people sentenced at court in England and Wales decreased by 77 per cent between 2008 and 2018, from 88,400 to 20,300. The Ministry of Justice report *An analysis of trends in first time entrants to the youth justice system*¹⁵ explores the potential reason for these substantial falls. They conclude that the decreases may be due to changes in policing practices, a reduction in youth crime, and longer-term trends which have seen reductions in the risk factors associated with offending behaviour for this age group.

Analysis was undertaken to explore whether there had been any changes to sentencing severity after the guideline came into force. Figure 1 below shows that between 2008 and the year before the guideline was published, the average severity score remained fairly similar, typically between 13 and 14 out of a scale of 0-100. To put this into context, a fine has a severity score of around 6 and a community order has a score of around 15. Community orders were the most frequently used disposal type, before and after the guideline came into force. The upper and lower confidence limits (represented by the dashed lines on Figure 1 below) indicate the range of values that sentencing severity might have taken in the absence of the guideline, taking into account changes to severity since 2008. As can be seen, sentence severity remained at similar levels within these confidence limits after the guideline came into force, so the guideline does not appear to have had an impact on average sentence levels.

¹⁴ This is a database of sentencers who have agreed to be approached by the Sentencing Council to take part in research from time to time. It is acknowledged that selecting participants from a pool of willing sentencers might skew the sample in favour of those who are well-disposed towards the Sentencing Council and/or are very used to our research. However, it should be noted that the pool is very large (more than 680 sentencers at the time of publication), so pool members are generally interviewed infrequently which will reduce their overall familiarity with the research.

¹⁵ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/653182/trends-in-fte-to-the-youth-justice-system.pdf

Figure 1: Sentencing severity time series analysis for children and young people, 2008-2018¹⁶

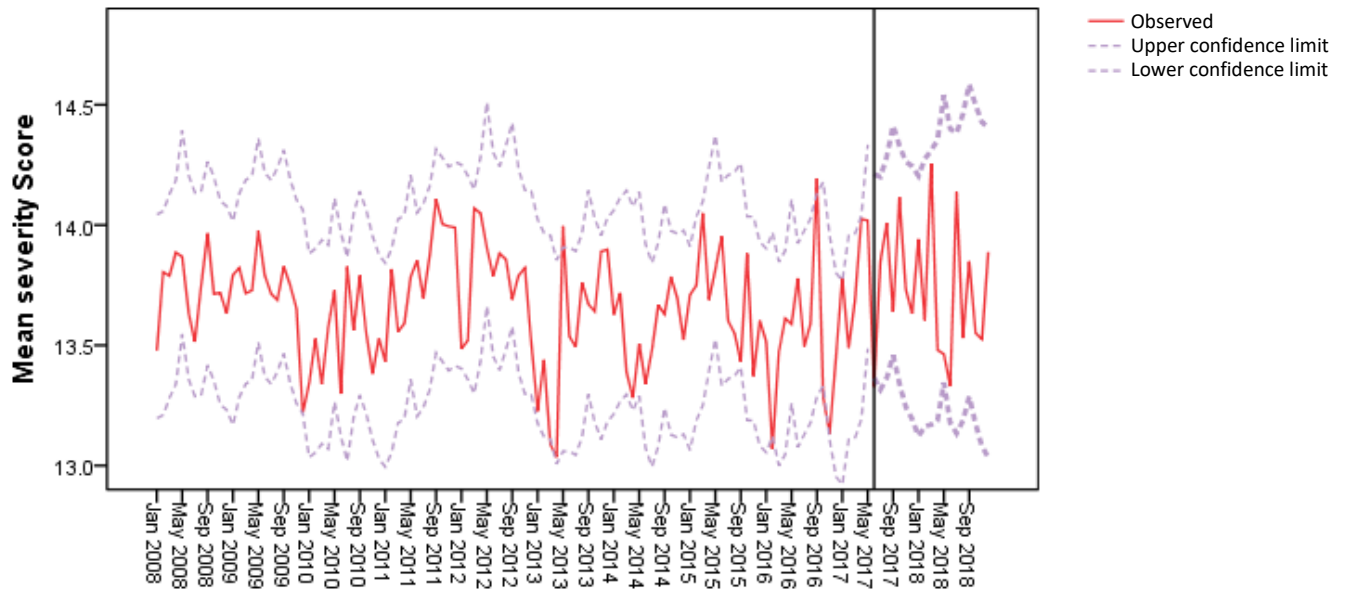


Table 1 below shows that around 68 per cent of children and young people sentenced received community orders, both before and after the guideline came into force. Community orders include referral orders¹⁷ (ROs) and youth rehabilitation orders¹⁸ (YROs). Discharges were the next most frequently used disposal, with 14 per cent sentenced to a discharge before and after the guideline came into force. The use of all other sentence outcomes also remained very similar before and after the guideline came into force.

The resource assessment noted that there could be a small shift from custodial to community orders as a result of the guideline. This has not been observed in these overall statistics, though the findings discussed later in this report cover potential impacts for sentencing of robbery, where there is tentative evidence that the guideline may have decreased sentencing severity for the 15 to 17 year old age group.

¹⁶ The number on the vertical axis is the sentencing severity score. The upper line refers to the 'upper confidence limit' of the forecast model, and the lower line refers to the 'lower confidence limit'. The area within these limits represents the 95 per cent confidence interval for the forecast model.

¹⁷ An RO requires the child or young person to attend a youth offender panel and agree a contract, containing certain commitments (for example, to repair any damage caused or to make financial recompense), which will last between three months and a year. ROs are mandatory in some circumstances, so sentencers will not have had a choice in some cases where community orders have been used. Mandatory ROs could not be identified from the CPD data, so it is not possible to say how much impact this may have on proportions of sentencing outcomes.

¹⁸ A YRO can include one or more of 18 different requirements that the child or young person must comply with for up to three years. Some examples of the requirements that can be imposed are a curfew, supervision, unpaid work, electronic monitoring, drug treatment, mental health treatment and education requirements.

Table 1: Sentence outcomes for children and young people, pre and post implementation of the guideline¹⁹

Disposal	Pre	Post ²⁰
Discharge	14%	14%
Fine	8%	8%
Community order	68%	68%
Immediate custody	6%	7%
Otherwise dealt with ²¹	3%	3%

Time series analysis was also conducted separately for the 12 to 14 and 15 to 17 year old age groups.²² These age groups were chosen because there are distinct differences in the sentencing regimes for each group. Table 2 below shows that for both age groups, community orders were the most frequently used disposal type before and after the guideline came into force, comprising around 80 per cent of 12 to 14 year olds sentenced and 65 per cent of 15 to 17 year olds sentenced. The use of fines and immediate custody was higher for 15 to 17 year olds than for 12 to 14 year olds, while the use of discharges was similar among both groups. Average sentencing severity did not appear to change for either age group after the guideline came into force.

Table 2: Sentence outcomes for children and young people, pre and post implementation of the guideline and by age group¹⁹

Disposal	12 to 14 year olds		15 to 17 year olds	
	Pre	Post	Pre	Post
Discharge	13%	13%	14%	14%
Fine	1%	1%	10%	10%
Community order	82%	81%	65%	65%
Immediate custody	2%	2%	7%	8%
Otherwise dealt with ²¹	2%	2%	3%	4%

Analysis was also conducted to understand whether there have been changes in sentencing outcomes for different ethnicities, because the guideline notes that Black, Asian and Minority Ethnic children and young people are over-represented in the youth justice system.²³

¹⁹ Percentages may not sum to 100 per cent due to rounding.

²⁰ There was one suspended sentence order in the post-guideline period, and this record has been excluded from the data.

²¹ The category 'Otherwise dealt with' includes: confiscation order; disqualification from driving; compensation; and other miscellaneous disposals.

²² It was not possible to perform time series analysis for the 10 to 11 year old age group due to the small number of offenders sentenced in this age group (less than 100 offenders sentenced per year since 2014).

²³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/568680/bame-disproportionality-in-the-cjs.pdf

Table 3 shows the proportion of children and young people in each of the ethnic groups in the year before and the year after the guideline came into force, not including the proportion of children and young people with unknown ethnicity. It shows a small increase in the proportions of Black children and young people and those of other ethnicities, and a small decrease in the proportions of White and Asian children and young people.

Table 3: Proportion of children and young people sentenced, pre and post implementation of the guideline and by ethnicity²⁴

Ethnicity	Pre	Post
White	75%	73%
Black	18%	20%
Asian	6%	5%
Other	1%	2%

Table 4 shows the proportion of sentencing outcomes by ethnicity. The figures show that, both before and after the introduction of the guideline, there was a higher proportion of White children and young people receiving a discharge, and a lower proportion receiving immediate custody, compared with children and young people of other ethnicities. It shows sentencing outcomes across all offences, so it is not possible to identify whether some ethnicities are more represented in certain offences or in more serious types of offences. The Council is considering what further research it could do into these disparities in sentencing outcomes and will continue to monitor outcomes for different ethnicities.

After the introduction of the guideline, for White children and young people, the proportion of each sentencing outcome did not appear to change. For Black children and young people, there was a small increase in the proportion sentenced to custody, though the change was not beyond similar proportions over the last ten years. For Asian children and young people, there appeared to be a small decrease in sentencing severity, with a shift from community orders to discharges. For children and young people of other ethnicities, the volumes are too low to draw conclusions from the data.

Table 4: Sentence outcomes for children and young people in the year, pre and post implementation of the guideline and by ethnicity²⁴

Disposal	White		Black		Asian		Other	
	Pre	Post ²⁵	Pre	Post	Pre	Post	Pre	Post
Discharge	15%	14%	12%	12%	10%	14%	12%	11%
Fine	5%	5%	5%	4%	8%	8%	6%	6%
Community order	71%	72%	71%	71%	70%	67%	71%	67%
Immediate custody	5%	6%	9%	10%	9%	9%	8%	13%
Otherwise dealt with ²¹	3%	3%	3%	3%	3%	3%	3%	3%

²⁴ These figures exclude children and young people with unknown ethnicity, who made up 18% of the total pre-guideline, and 26% post-guideline. Percentages may not sum to 100 per cent due to rounding.

²⁵ For community orders and immediate custody, the changes are very small but round to a one percentage point change.

Findings from the Opinion Research Services (ORS) survey

The Council considered findings from research carried out by ORS, which explored the views of sentencers within the magistracy and judiciary about sentencing guidelines in general. This research found that the *Sentencing Children and Young People Definitive Guideline* was the most popular guideline among district judges and deputy district judges, with 40 per cent listing it as one of their three preferred guidelines, and the fourth most frequently listed amongst Crown Court and High Court judges (19 per cent), who sentence children and young people less often.²⁶ Around seven per cent of magistrates listed it as one of their three preferred guidelines.²⁷ This proportion is likely to be lower because many magistrates do not sit in the Youth Court and will not have used the guideline.

For these sentencers, the reasons they gave for it being a preferred guideline included clarity and conciseness, helpfulness and ease of use. For example, one sentencer said:

[The guideline is] brilliant – practically all the information required to sentence...is collected in one place. It is a complex and tricky area and easy to get wrong. The information is clear and well set out.

District Judge

Participants were asked about the extent to which they use sentencing guidelines in court: all said they always use them where they exist for the offence in question. Judges tended to use the offence specific guidelines more than overarching principles, with the exception of the *Sentencing Children and Young People Definitive guideline* which was used more frequently.

I use [the guideline] because it collects together a lot of relevant and complicated material which you need to have in mind when you're sentencing a young person and it's very useful.

High Court Judge

In interview, overwhelmingly, the responses were very positive, and the guideline was seen as a comprehensive and straightforward guide to a complex sentencing area.

[The guideline] has taken us away from a basic 'halve the adult sentence' mentality and led us to think more about the underlying principles for sentencing youths.

Magistrate

A few participants suggested that there should also be guidelines for young adults (18 to 21 year olds) that consider their specific vulnerabilities and developing maturity in the context of their offending.

In the sentencing guidelines at the moment, the only recognition of the needs of that group is in mitigating factors – maturity and age... so what it commonly leads to is a reduction in sentence length. What it doesn't do is lead to a change in how that group are treated overall by the system, so arguably there ought to be a more comprehensive set of principles.

Charity representative

²⁶ The top three were sexual offences, identified by 60 per cent of Crown Court and High Court judges as one of their three preferred guidelines, drug offences, identified by 47 per cent, and assault offences, identified by 19 per cent.

²⁷ Many magistrates do not sit in the Youth Court and will not have used the guideline.

Findings from the Council's survey

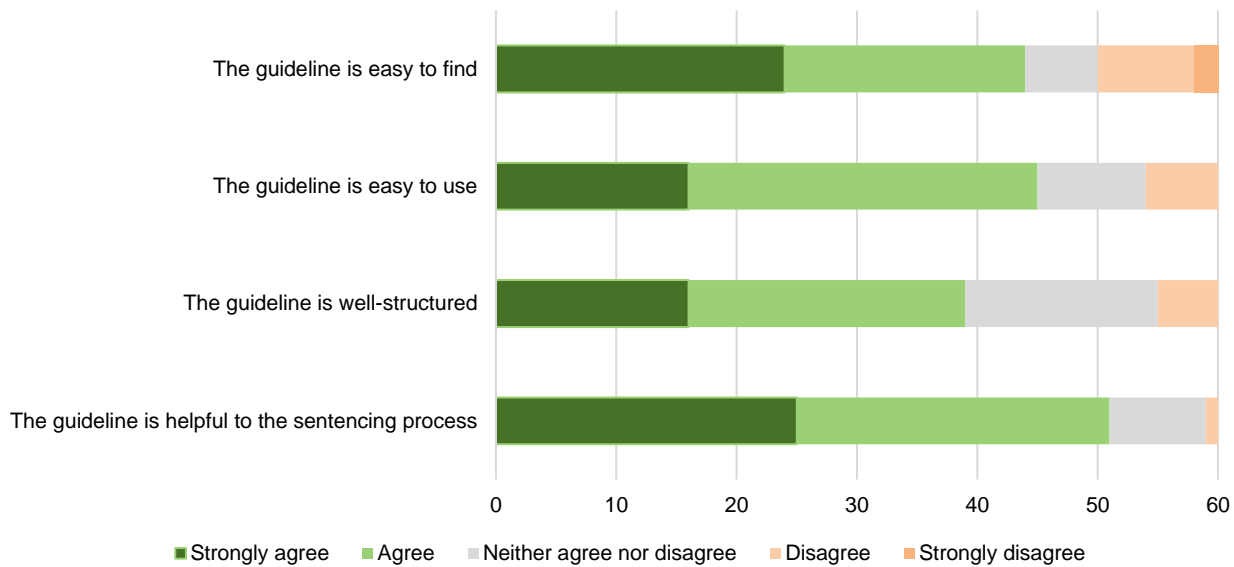
The Council conducted further survey research, to establish whether the guideline met its stated aim, to understand how sentencers use the guideline and their attitudes to it and to explore sentencers' perception of whether the guideline has changed sentencing behaviour. Responses were received from 60 sentencers: 49 magistrates, ten district judges and one Crown Court judge.

Findings from the survey showed that the majority of respondents used the guideline regularly in sentencing, and found it was easy to use and helpful to the sentencing process. Overall, 57 per cent (34) of respondents said they usually or always refer to the guideline. District judges were more likely to say they usually or always refer to the guideline (9 out of 10 respondents) than magistrates (24 out of 49, or 49 per cent). Furthermore, 97 per cent (58) of all respondents said they usually or always apply the principles set out in the guideline. When asked how they found out about the guideline, 42 per cent (25) of respondents said it was through training, 20 per cent (12) through the Sentencing Council website and 24 per cent (14) through the Judicial Intranet. Two had not known about the guideline before completing the survey.

When asked to comment about when they referred to the guideline, respondents reported that the Youth Offending Team and Legal Advisers will usually direct the bench to the guideline. Some said they would make sure to refer to the guideline when considering more serious cases where a detention and training order is a possible outcome, when dealing with multiple charges, or when the child or young person is particularly vulnerable (for example, those in care, or vulnerable to county lines exploitation).

Respondents were asked how far they agreed with a series of statements about their experience of using the guideline. Figure 2 below shows their responses, which were largely positive: 73 per cent (44) of respondents said the guideline was easy to find, 75 per cent (45) said it was easy to use, 65 per cent (39) said it was well-structured and 85 per cent (51) said it was helpful to the sentencing process.

Figure 2: Sentencers' views on the guideline, responding to: To what extent do you agree with the following statements?



Base: 60 respondents

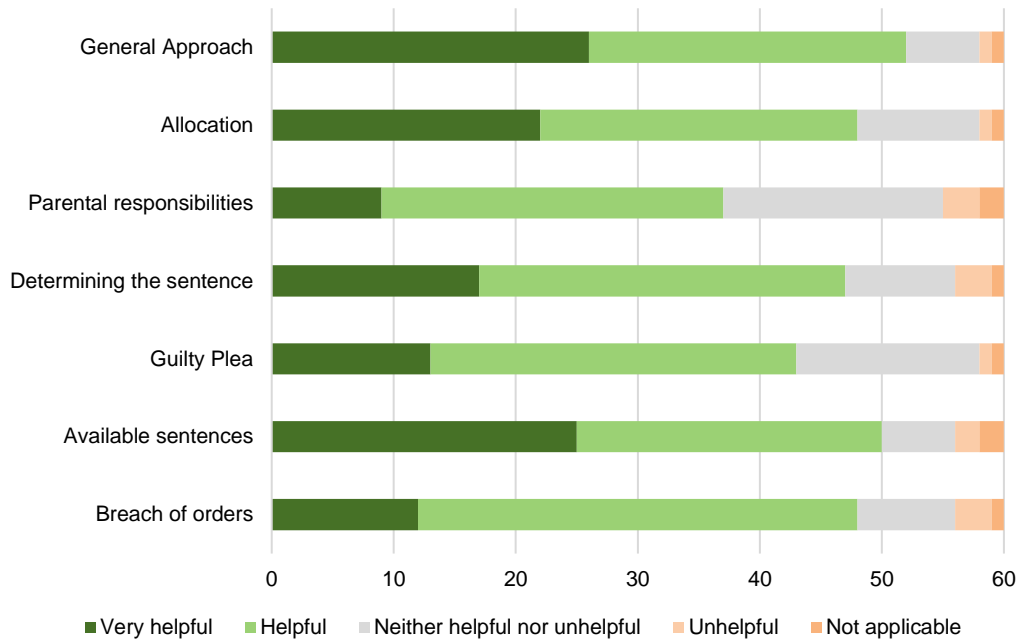
Respondents said that the guideline ensures focus on the welfare of the child and has led to greater consistency in decision-making, and for magistrates, that they used the guideline to frame discussions in the retiring room. One respondent said it was “*the most useful of the ‘general’ guidelines that we have.*” It was also described as ‘relevant,’ ‘sensible,’ ‘appropriate’ and ‘helpful.’ Some respondents said it had been particularly useful for them in borderline custody cases and in considering the welfare of the child.

Although responses were broadly positive, a small number were critical of the guideline, or identified areas for improvement. One respondent described the Overarching Principles as “*vague and unclear*” and “*of no assistance in determining the appropriate sentence.*” They thought there should be more offence-specific guidelines. Some said the guideline was too long and wordy, and that more flow charts and summaries of the key points would make it a more useful tool in a busy court. Several respondents said the existing flow charts were especially useful.

There were areas that some respondents thought were missing from the guideline or needed greater detail. These included guidance on ‘county lines’ and modern slavery cases, treatment of non-compliance and non-engagement with previous sentences in the context of repeat and serious offending, guidance on joint enterprise cases where the co-defendant is an adult, guidance on determining levels of maturity and additional offence-specific guidelines.

Respondents were also asked about how helpful each section of the Overarching Principles was to the sentencing process, shown in Figure 3. More than three quarters of respondents said the following sections were helpful or very helpful: General Approach, Allocation, Determining the Sentence, Available Sentences and Breach of Orders. Of the remaining sections, 62 per cent (37) said Parental Responsibilities was helpful or very helpful, and 72 per cent (43) said Guilty Pleas was helpful or very helpful.

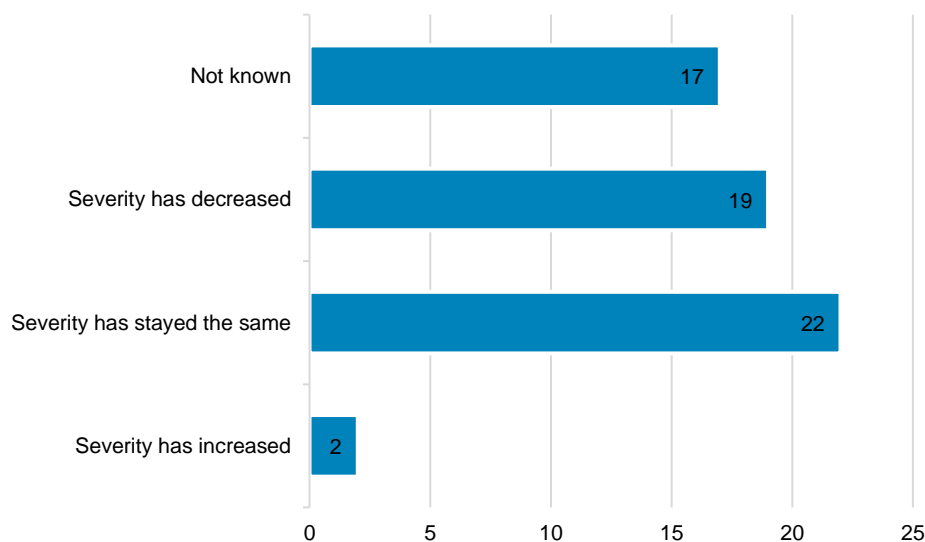
Figure 3: Sentencers’ views on the guideline, responding to: To what extent has each section of the Overarching Principles been helpful to the sentencing process?



Base: 60 respondents

Figure 4 shows sentencers’ views on the impact of the guideline on sentencing severity. When respondents were asked what impact they felt the guideline has had on sentencing severity, 37 per cent (22) said they thought it had not impacted on sentencing severity, and 28 per cent (17) said they did not know whether it had. A further 32 per cent (19) thought sentencing severity had decreased because of the guideline, and just two people thought it had increased.

Figure 4: Sentencers’ views on the impact of the guideline on sentencing severity



Base: 60 respondents

Some mentioned that children and young people come to court for more serious offences, due to greater use of out-of-court disposals. One respondent, who thought that sentencing severity had increased, said: *“many more in our area have been diverted away from the court system so we tend to deal with those cases of a more serious nature which lends itself to more severe sentences.”*

Those who thought that sentencing severity had decreased pointed to increased numbers of referral orders and greater consideration before imposing detention/training orders.

Some comments reflected that the focus on rehabilitative rather than punitive sentencing in the guideline has been helpful in sentencing practice:

Magistrates are often faced with prosecutors, defence advocates and legal advisers who are keen to send young people up to the Crown Court and the guideline is very helpful in resisting this pressure when appropriate. Magistrate

Offence specific findings

Findings from the Council’s survey showed that nearly three-quarters of respondents had used one or both of the offence-specific guidelines. Of the 60 respondents, 36 had used the Robbery guideline, and 19 had used the Sexual Offences guideline, with the majority finding both guidelines helpful: 34 said they had found the Robbery guideline helpful or very helpful, while two had found it neither helpful nor unhelpful; 17 respondents had found the Sexual Offences guideline helpful or very helpful, while two had found it neither helpful nor unhelpful.

Respondents noted the difficulties in sentencing when the cases are so infrequent. One person thought the guidelines could be overlooked because sentencers were not accustomed to using them, while another described them as *“useful, especially when leading a sentencing exercise with less experienced colleagues.”* Overall, comments were positive: the Sexual Offences guideline was described as *“clearly set out and easy to follow”* and the Robbery guideline as *“appropriate and helpful.”*

A few respondents thought there should be more offence-specific guidelines, while one person said the Overarching Principles could be applied just as usefully in the absence of offence-specific guidelines. One respondent said the offence-specific guidelines were difficult to find and thought it would be useful for them to be linked from the corresponding adult guidelines.

Robbery

The number of children and young people sentenced for robbery fluctuated between 3,500 and 3,800 per year between 2008 and 2011. Since 2011, the number of offenders sentenced has decreased, from 3,800 offenders sentenced in 2011 to 1,100 offenders sentenced in 2018. The possible reasons for decreases to the number of children and young people sentenced in recent years are explored further in the overall findings section on page 7 of this report.

Figure 5 below shows that average sentencing severity remained at similar levels in the years before the guideline came into force. After the guideline came into force, sentencing severity largely remained within the confidence limits.

Figure 5: Sentencing severity time series analysis for children and young people sentenced for robbery, 2008-2018

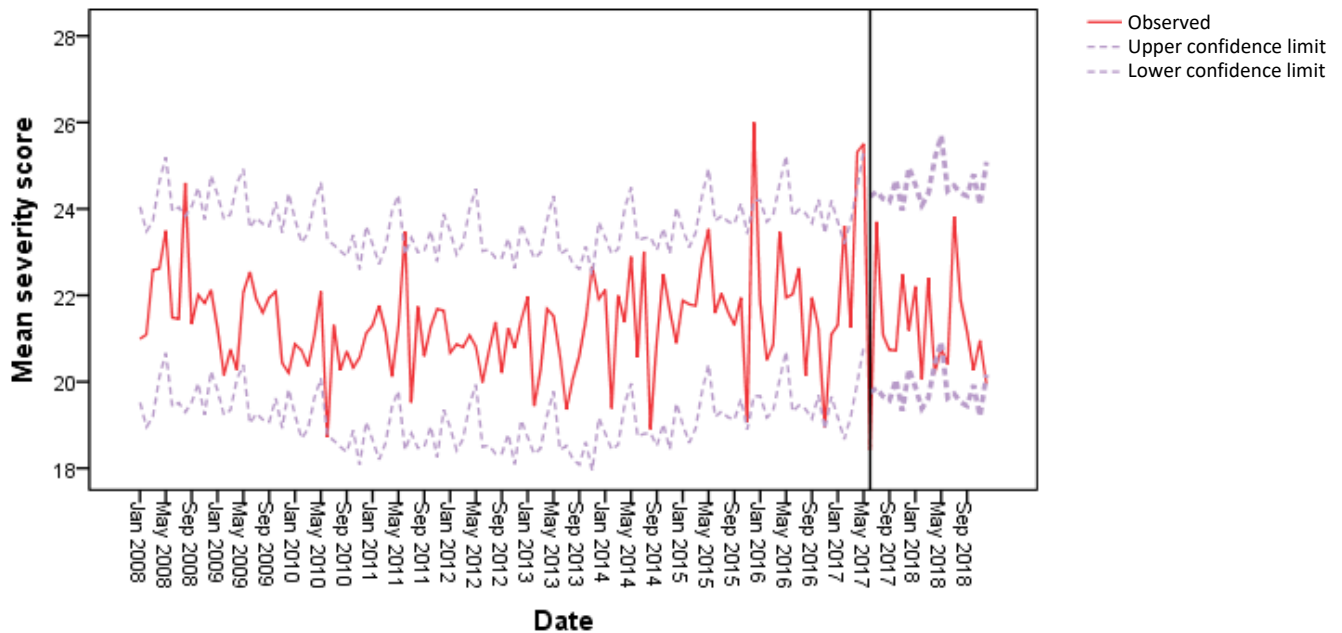


Table 5 below shows that community orders remained the most frequent sentence outcome after the guideline came into force, comprising around three quarters of offenders sentenced.

Table 5: Sentence outcomes for children and young people sentenced for robbery, pre and post implementation of the guideline²⁸

Disposal	Pre	Post
Discharge	<0.5%	<0.5%
Fine	0%	0%
Community order	73%	76%
Immediate custody	24%	22%
Otherwise dealt with ²¹	3%	2%

Data for robbery were explored further. Time series analysis was conducted for the 12 to 14 year old and 15 to 17 year old age groups separately.²⁹

Figure 6 below shows that, for the 15 to 17 year old age group, average sentencing severity crossed the lower confidence limit of the forecast range in several months after the guideline came into force. This offers tentative evidence that the guideline may have decreased sentencing severity for this age group. However, the decrease occurred for a short period, was not substantial and appears to be similar to the levels of sentencing severity in 2014; one way to offer further evidence of whether the observed post guideline

²⁸ Percentages may not sum to 100 per cent due to rounding.

²⁹ It was not possible to perform time series analysis for the 10 to 11 year old age group due to the small number of offenders sentenced for robbery in this age group (fewer than 10 per year in the years before and after the guideline came into force).

decrease persists will be to monitor the data to see whether levels return to normal or continue to decrease.

Figure 6: Sentencing severity time series analysis for 15 to 17 year olds sentenced for robbery, 2008-2018

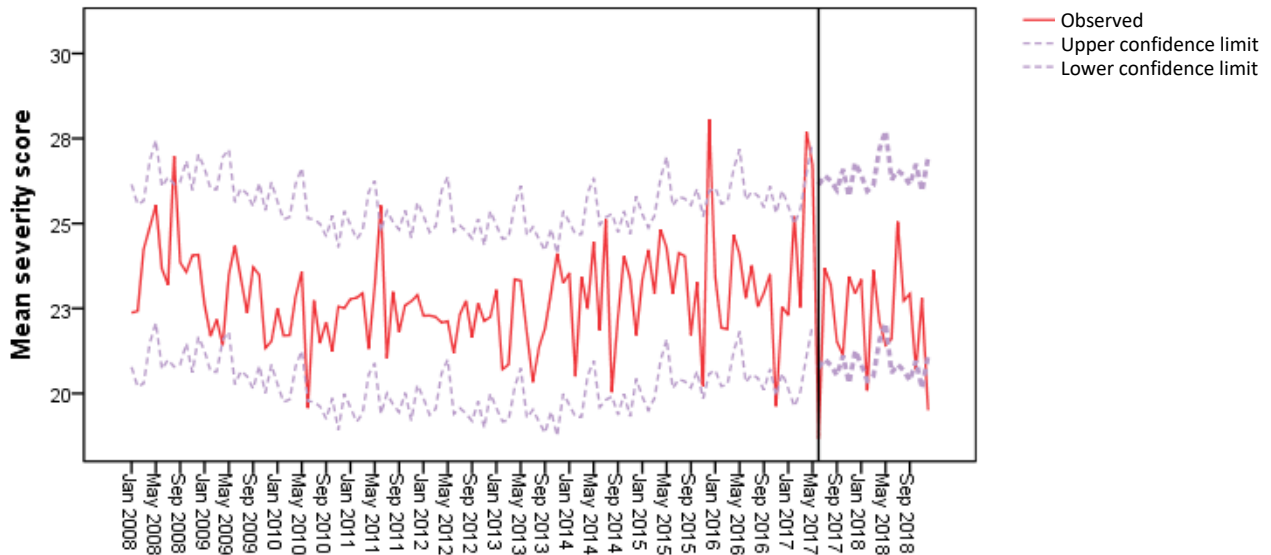


Table 6 below shows that this was driven by an increase in the use of community orders and a decrease in the use of immediate custodial sentences after the guideline came into force. This finding is consistent with the resource assessment, which anticipated a small decrease in the use of custodial sentences and a corresponding uplift in the use of community orders for a small number of cases.

For the 12 to 14-year-old age group, there did not appear to be a change to average sentencing severity after the guideline came into force.

Table 6: Sentence outcomes for 15 to 17 year olds sentenced for robbery, pre and post implementation of the guideline²⁸

Disposal	Pre	Post
Discharge	<0.5%	<0.5%
Fine	0%	0%
Community order	69%	73%
Immediate custody	28%	25%
Otherwise dealt with ²¹	3%	2%

Sexual offences

The number of children and young people sentenced for non-penetrative sexual offences has generally decreased over the past decade, with 230 offenders sentenced in 2008 and 100 offenders sentenced in 2018. The possible reasons for decreases to the number of

children and young people sentenced in recent years are explored further in the overall findings section to this report.

Figure 7 below shows that average sentencing severity remained at similar levels in the years before the guideline came into force. After the guideline came into force, sentencing severity largely remained within the confidence limits, which suggests that the guideline did not have an impact on average sentencing severity.

Figure 7: Sentencing severity time series analysis for children and young people sentenced for non-penetrative sexual offences, 2008-2018³⁰

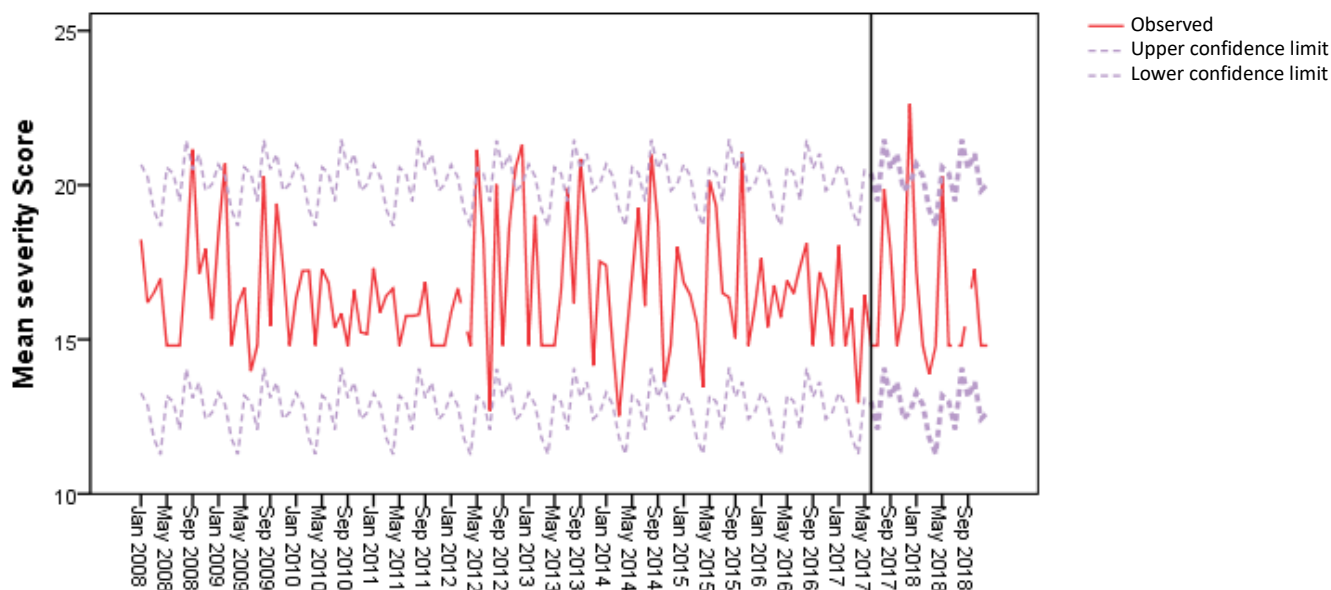


Table 7 below shows that community orders remained the most frequent sentence outcome after the guideline came into force, comprising around 90 per cent of offenders sentenced.

It was not possible to perform time series analysis for different age groups for non-penetrative sexual offences, due to the small number of offenders sentenced each month.

Table 7: Sentence outcomes for children and young people sentenced for non-penetrative sexual offences, pre and post implementation of the guideline¹⁹

Disposal	Pre	Post
Discharge	1%	1%
Fine	0%	0%
Community order	90%	91%
Immediate custody	8%	8%
Otherwise dealt with ²¹	1%	1%

³⁰ Where the severity score would have been based on fewer than five offenders sentenced in any month, the average severity score has been omitted from the time series analysis so as not to be disclosive.

The number of children and young people sentenced for penetrative sexual offences fluctuated between 2008 and 2017, with between 90 and 150 offenders sentenced per year. Around 70 offenders were sentenced in 2018.

Figure 8 below shows that average sentencing severity remained at similar levels in the years before the guideline came into force. Figure 8 also shows that there are a wide range of sentences used for these offences, with average sentencing severity varying from month to month between a score of around 20 to around 40. To put this into context a community order has a severity score of around 15 and a one year custodial sentence (prior to any reduction for guilty plea) has a severity score of around 35. After the guideline came into force, sentencing severity largely remained within the confidence limits, which suggests that the guideline did not have an impact on average sentencing severity.

Figure 8: Sentencing severity time series analysis for children and young people sentenced for penetrative sexual offences, 2008-2018³⁰

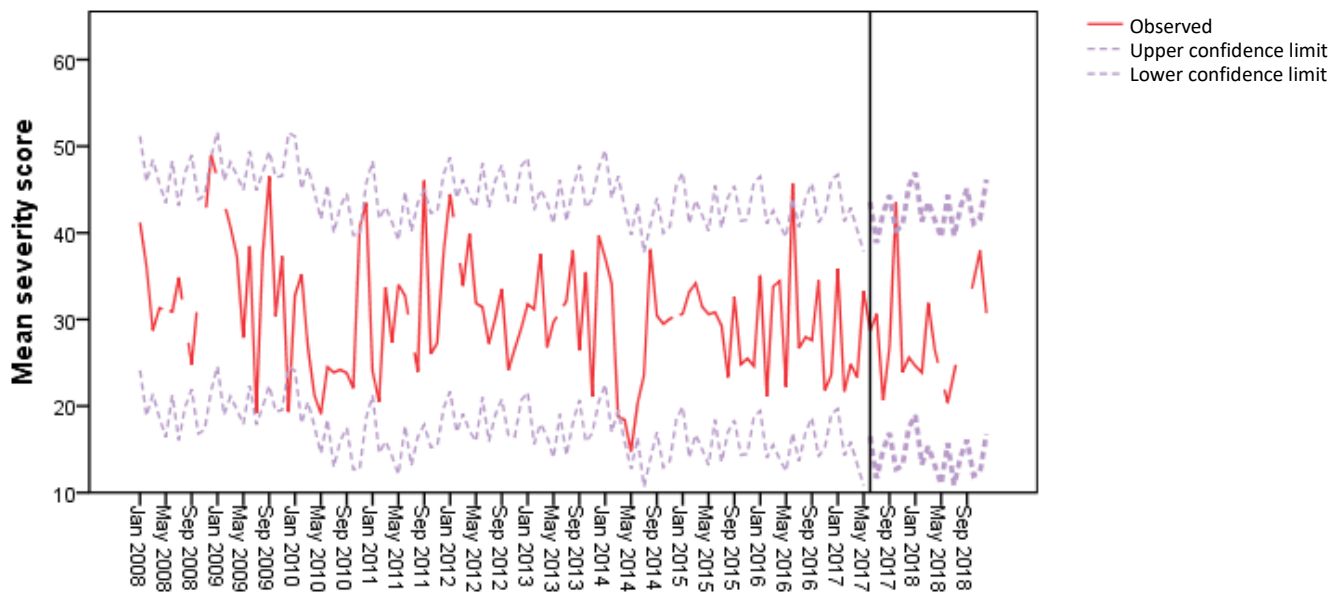


Table 8 below shows that community orders remained the most frequent sentence outcome after the guideline came into force, followed by immediate custodial sentences.

Again, it was not possible to perform time series analysis for different age groups for penetrative sexual offences, due to the small number of offenders sentenced each month.

Table 8: Sentence outcomes for children and young people sentenced for penetrative sexual offences, pre and post implementation of the guideline

Disposal	Pre	Post
Discharge	0%	0%
Fine	0%	0%
Community order	60%	62%
Immediate custody	35%	34%
Otherwise dealt with ²¹	5%	4%

Conclusion

The analysis undertaken as part of this exercise has enabled an assessment of the impact and implementation of the Sentencing Council's *Sentencing Children and Young People Definitive Guideline*.

Research with sentencers indicated that the guideline has been positively received by sentencers, who find it easy to use and helpful to the sentencing process. Most respondents referred to the guideline when sentencing, and almost all apply the principles even if they do not refer to it for individual cases.

The quantitative findings suggest that overall the guideline has not changed average sentencing severity, although for robbery it is possible that the guideline may have led to a decrease in sentencing severity for the 15 to 17 year old age group. This is consistent with the resource assessment published alongside the guideline, which set out that the aim in developing these guidelines was not to change sentencing practice but anticipated that there might be a shift from custodial to community sentences for a small number of cases.

The Council has considered the analysis and research conducted as part of this evaluation and is content that the guideline is fit for purpose and working as intended, and therefore that there is no immediate need to revisit the guideline.

Acknowledgements

We would like to thank Opinion Research Services (ORS) for their research on judicial attitudes to the guidelines, and to the judges, magistrates, legal practitioners and government and charity representatives who have taken part in surveys and interviews with ORS and as part of this assessment.

Authors

Eliza Cardale and Pamela Jooman
Office of the Sentencing Council

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 project³¹ 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 rise in case mix cannot be ruled out).

³¹ Research by Pina-Sánchez, Gosling and Geneletti: Tackling Selection Bias in Sentencing Data Analysis: A New Approach Based on Mixture Models, Expert Elicitation Techniques, and Bayesian Statistics. Information available at: <https://www.ncrm.ac.uk/research/SentencingData/>