

Consultation Stage Resource Assessment: Public Order Offences

1 INTRODUCTION

1.1 This document fulfils the Council's statutory duty to produce a resource assessment which considers the likely effect of its guidelines on the resources required for the provision of prison places, probation and youth justice services¹.

2 RATIONALE AND OBJECTIVES FOR NEW GUIDELINE

2.1 In August 2008, the SGC published *Magistrates' Court Sentencing Guidelines* (MCSG) guidance on sentencing the offence of affray and summary offences relating to threatening and disorderly behaviour provided for by section 4, section 4A and section 5 of the Public Order Act 1986 (POA 1986). There was also a brief reference to violent disorder offences which may be sentenced in the magistrates' court. This guidance did not include guidelines for sentencing these offences in the Crown Court, and also did not include guidance on sentencing the public order offences of riot, or offences relating to stirring up racial or religious hatred and hatred based on sexual orientation. The Council is proposing new sentencing guidelines for all these offences.

2.2 The Council's aim in developing these guidelines has been to ensure that the sentences are proportionate to the offence committed and in relation to other offences, and additionally to promote a consistent approach to sentencing.

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

3 SCOPE

3.1 This resource assessment covers the following offences:

- Riot;
- Violent Disorder;
- Affray;
- Threatening Behaviour;
- Disorderly Behaviour with intent;
- Disorderly Behaviour;
- Racially or religiously aggravated threatening behaviour;
- Racially or religiously aggravated disorderly behaviour with intent;
- Racially or religiously aggravated disorderly behaviour; and,
- Racial hatred offences and hatred against persons on religious grounds or grounds of sexual orientation.

4 CURRENT SENTENCING PRACTICE²

4.1 The offences covered by the public order guideline are relatively high in volume. There were 22,500 offenders sentenced for the public order offences covered by the draft guideline in 2016.

Riot

4.2 Riot is a low volume offence, with around 40 offenders sentenced for this offence over the past decade (2006-2016). All offenders sentenced for this offence received an immediate custodial sentence, with an average custodial sentence length³ of 5 years 3 months. The statutory maximum sentence for this offence is 10 years' imprisonment.

Violent disorder

4.3 Violent disorder is a relatively low volume offence, with 340 offenders sentenced for this offence in 2016. The majority of offenders sentenced for this offence receive custodial sentences (69% of offenders sentenced in 2016 received an immediate custodial sentence, and a further 23% of offenders received a suspended

² The Court Proceedings Database (CPD), maintained by the Ministry of Justice (MoJ), is the data source for these statistics. Further information about this data can be found in the accompanying statistical bulletin published here:

<http://www.sentencingcouncil.org.uk/publications/?s&cat=statistical-bulletin>

³ The averages presented in this report are mean average custodial sentence length values for offenders sentenced to determinate custodial sentences, after any reduction for guilty plea.

sentence). The average custodial sentence length for offenders given an immediate custodial sentence in 2016 was 1 year 7 months. The statutory maximum sentence for this offence is five years' imprisonment.

Affray

4.4 Affray is a relatively high volume offence, with 3,000 offenders sentenced for the offence in 2016. The majority of offenders are sentenced in the Crown Court (83 per cent of offenders sentenced in 2016 were sentenced in the Crown Court). The majority of offenders sentenced for this offence receive custodial sentences (41 per cent of offenders sentenced in 2016 received a suspended sentence, and a further 34 per cent of offenders received an immediate custodial sentence). The average custodial sentence length for offenders given an immediate custodial sentence in 2016 was 10 months. The statutory maximum sentence for this offence is three years' imprisonment.

Threatening behaviour, disorderly behaviour with intent and disorderly behaviour

4.5 There were around 14,800 offenders sentenced for threatening behaviour, disorderly behaviour with intent and disorderly behaviour offences in 2016. Around 6,500 offenders were sentenced for the offence of threatening behaviour (fear or provocation of violence, s4 POA 1986), and community orders were the most frequently used disposal for this offence, followed by fines (35 per cent of individuals received a community order, with a further 23 per cent receiving a fine). Approximately 14 per cent of offenders sentenced received an immediate custodial sentence.

4.6 Around 3,200 offenders were sentenced for disorderly behaviour with intent (s4A, POA 1986) in 2016. Fines were the most frequently used disposal for this offence (39 per cent of offenders sentenced received a fine in 2016), followed by community orders (25 per cent). For both offences, the average custodial sentence length was 2 months in 2016, and the statutory maximum sentence is six months' imprisonment.

4.7 There were around 5,100 offenders sentenced for disorderly behaviour (s5, POA 1986) in 2016. Around 60 per cent of offenders sentenced for this offence received a fine, and a further 36 per cent of offenders received an absolute or

conditional discharge. The statutory maximum sentence for this offence is a level 3 fine.⁴

Racially or religiously aggravated threatening behaviour, racially or religiously aggravated disorderly behaviour with intent and racially or religiously aggravated disorderly behaviour

4.8 Around 4,300 offenders were sentenced for racially or religiously aggravated threatening or disorderly behaviour offences in 2016. Racially or religiously aggravated threatening behaviour was the lowest volume offence, with approximately 580 offenders sentenced in 2016. Half of offenders sentenced for this offence received a custodial sentence (26 per cent received a suspended sentence, while 25 per cent received an immediate custodial sentence). A further 33 per cent received a community order. The average custodial sentence length for offenders sentenced to immediate custody was four months, while the statutory maximum sentence for this offence is two years' imprisonment.

4.9 Around 2,400 offenders were sentenced for the offence of racially or religiously aggravated disorderly behaviour with intent in 2016. Around 31 per cent of offenders received a community order for this offence, with 30 per cent receiving fines and 30 per cent receiving a custodial sentence (either a suspended or an immediate custodial sentence). The average custodial sentence length for offenders sentenced to immediate custody was three months, while the statutory maximum sentence for this offence is two years' imprisonment.

4.10 There were around 1,400 offenders sentenced for racially or religiously aggravated disorderly behaviour in 2016. Around 74 per cent of offenders sentenced for this offence received a fine, and a further 17 per cent of offenders received an absolute or conditional discharge. The statutory maximum sentence for this offence is a level 4 fine.⁵

⁴ A level 3 fine represents a fine with a statutory limit of £1,000, see here for more details: <https://www.sentencingcouncil.org.uk/explanatory-material/item/fines-and-financial-orders/approach-to-the-assessment-of-fines-2/9-maximum-fines/>

⁵ A level 4 fine represents a fine with a statutory limit of £2,500, see here for more details: <https://www.sentencingcouncil.org.uk/explanatory-material/item/fines-and-financial-orders/approach-to-the-assessment-of-fines-2/9-maximum-fines/>

Racial hatred offences and hatred against persons on religious grounds or grounds of sexual orientation

4.11 The offences of racial hatred and hatred against persons on religious grounds or grounds of sexual orientation stirring up racial or religious hatred or hatred towards sexual orientation are very low in volume, with around 70 offenders sentenced over the period 2006-2016. Some data quality issues were identified when looking at the data for these offences, therefore this figure should be treated with caution, and sentence outcome figures are not provided in this report so as not to mislead. The statutory maximum sentence for these offences is seven years' imprisonment.

5 KEY ASSUMPTIONS

5.1 In order to assess the resource impact of the guideline, assumptions have been made based on analysis and on advice from Council members and policy makers.

5.2 Analytical and research work has been undertaken during guideline development, including analysis of data on current sentencing levels (where data is available), and analysis of sentencing remarks, news articles and any existing guidance.

5.3 However, while data exists on the number of offenders sentenced for public order offences, and the sentences imposed, there is a lack of data on the categories of seriousness of current cases. It is therefore difficult to establish how current cases would be categorised across the levels of harm and culpability in the draft guideline.

5.4 Assumptions have been agreed through consultation with Council members and policy makers, based on the intended and expected effect of the guideline on sentencing practice. However, it is difficult to foresee precisely how sentencers' behaviour may be affected across the full range of sentencing scenarios.

5.5 Any estimates of the impact of the new guidelines are therefore subject to uncertainty due to the limitations of the data, and uncertainty around how they will be implemented in practice.

5.6 To support the development of the guideline and mitigate the risk of the guideline having an unintended impact, the definitive guideline and final resource assessment will take into account research undertaken with sentencers as part of the consultation.

5.7 The resource impacts presented in this document relate solely to the expected

resource impact of the draft public order guideline. Any future changes in sentencing practice which are unrelated to the publication of the new guidelines are therefore not included in the estimates.

6 RESOURCE IMPACTS

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

6.1 The draft public order guideline intends to improve consistency in sentencing and not to cause a change in average sentencing practice. Overall, the guideline is not expected to have any impact on prison or probation resources:

- For riot and stirring up racial or religious hatred, or hatred towards sexual orientation, the number of offenders sentenced is low, and proposed sentence ranges have been set based on a number of sentencing remarks for these offences (where available). It is not anticipated that there will be any impact on prison and probation resources.
- For the offences of violent disorder, affray, racially or religiously aggravated threatening behaviour and racially or religiously aggravated disorderly behaviour with intent, proposed sentencing ranges have been set with current sentencing practice in mind. It is not anticipated that there will be any impact on prison and probation resources, and findings from consultation stage research will be considered for the final resource assessment.
- For the offences of threatening behaviour and disorderly behaviour with intent, there have been some reductions to sentencing ranges and starting points for the different levels of offence seriousness, compared to the MCSG. However, the way in which the draft guideline assesses seriousness is different to the MCSG. The sentencing ranges and starting points in the draft guideline aim to reflect current sentencing practice and have been developed using a number of transcripts of sentencing remarks for this offence. However only a limited number of transcripts were available because this is a summary only offence (and so is usually sentenced at the magistrates' court, where transcripts of sentencing remarks are not available). It is not anticipated that there will be any impact on prison and probation resources, and findings from consultation stage research will be considered for the final resource assessment.

- For the offences of disorderly behaviour and racially or religiously aggravated disorderly behaviour, the maximum sentence is a fine and therefore the draft guideline will not have an impact on prison and probation resources. For the offence of disorderly behaviour, the draft guideline introduces a new higher category of offending with a higher level of fine than in the existing MCSG guidance (a Band C fine). The guideline may therefore increase fine values for this offence. Also, because a fine is included for all levels of offending for racially or religiously aggravated disorderly behaviour - whereas data suggests that around 17 per cent of offenders sentenced for this offence received an absolute or conditional discharge in 2016 (after any reduction for guilty plea) - it is also possible that the draft guideline could increase the number of offenders sentenced to a fine for this offence.

7 RISKS

7.1 Two main risks have been identified:

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

7.2 The Council uses an assessment of current sentencing practice as a basis to consider whether current sentencing levels are appropriate or whether any changes should be made. Inaccuracies in the Council's assessment could cause unintended changes in sentencing practice when the new guideline comes into effect. This is a bigger risk for the summary only offences covered by the guideline, where there is a limited amount of information available from sentencing remarks about the factors taken into account during sentencing.

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

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

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

7.5 If sentencers do not interpret the guidelines as intended, this could cause a change in the average (mean) severity of sentencing, with associated resource effects.

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

7.7 Following the release of the guidelines, explanatory material will be provided to read alongside the guidelines; consultees can also feedback their views of the likely effect of the guidelines, and whether this differs from the effects set out in the consultation stage resource assessment. The Council also uses data from the Ministry of Justice to monitor the effects of its guidelines to ensure any divergence from its aims is identified as quickly as possible.