

Sentencing Council

FINAL RESOURCE ASSESSMENT: BREACH OF A SUSPENDED SENTENCE ORDER, COMMUNITY ORDER AND POST SENTENCE SUPERVISION

1 INTRODUCTION

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

2 RATIONALE AND OBJECTIVES FOR NEW GUIDELINE

2.1 The existing Sentencing Guideline Council's guideline *New Sentences: Criminal Justice Act 2003* contains limited guidance on breach of suspended sentence orders (SSOs) and community orders (COs). It has already been replaced in part by the *Imposition of Community and Custodial Sentences* guideline, which came into force in February 2017. Due to evidence identified during the early development of the Breach guideline which suggested that SSOs are sometimes being imposed as a more severe form of CO, the Imposition guideline was developed to ensure that the principles for the imposition of these sentences are clarified to reverse this trend. The guideline is more functional than the previous narrative guidance, while retaining key information and highlighting principles that are paramount in imposing these sentences. There is currently no guideline for breach of post sentence supervision due to the provisions being so recent.²

2.2 The guidelines for breach of a CO, breach of a SSO and breach of post-sentence supervision (PSS) seek to be more of a functional tool for sentencers and to promote consistency in dealing with these breaches.

3 SCOPE

3.1 This resource assessment covers the following offences:

- Breach of a SSO;

¹ Coroners and Justice Act 2009 section 127.

² The post-sentence supervision provisions were introduced in February 2015.

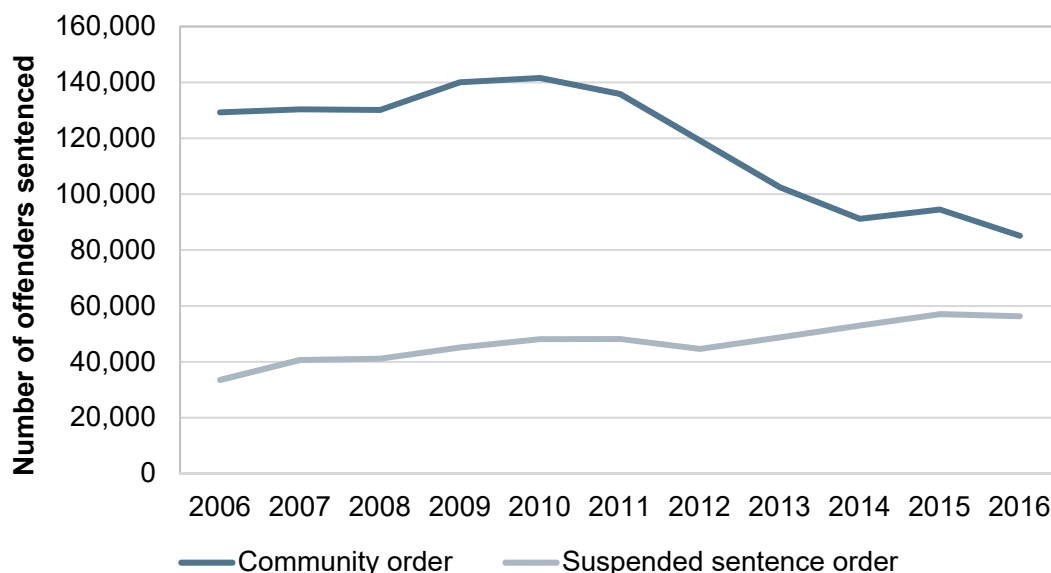
- Breach of a CO; and,
- Breach of PSS.

3.2 Other breach offences, for which the Council has produced new guidelines, are covered under three further separate resource assessments.

4 CURRENT SENTENCING PRACTICE

4.1 Figure 1 shows the number of adult offenders sentenced to SSOs and COs imposed over the last ten years. As can be seen, the number of adult offenders sentenced to a CO has decreased (from around 129,300 in 2006 to around 85,100 in 2016) and the number sentenced to SSOs has increased (from 33,500 in 2006, to 56,300 in 2016).³⁴

Figure 1: Number of adult offenders sentenced to a suspended sentence order or community order, all courts, 2006-2016



4.2 If an offender fails to comply with the conditions of their CO or SSO, or commits a further offence during the operational period of the order, then they face being returned to court. This process is called a 'breach'. The court may add additional requirements to a CO, and if the breach is serious enough they may revoke the original sentence and re-sentence the offender which may involve a custodial sentence. A

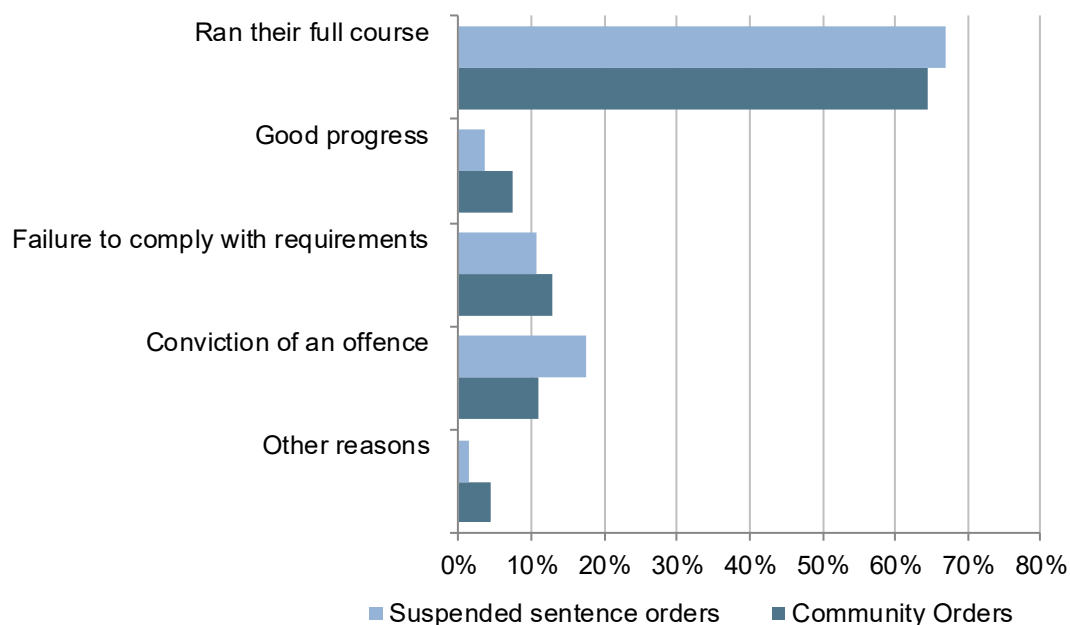
³ <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2016> (See 'Criminal justice statistics outcomes by offence tool' and filter the tool to show adults only)

⁴ Data on sentencing only include cases where the specified offence was the principal offence committed. When a defendant has been found guilty of two or more offences this is the offence for which the heaviest penalty is imposed. Where the same disposal is imposed for two or more offences, the offence selected is the offence for which the statutory maximum penalty is the most severe. Although the offender will receive a sentence for each of the offences that they are convicted of, it is only the sentence for the principal offence that is presented.

breached SSO must be activated unless it would be unjust to do so in all of the circumstances (this is a requirement of the legislation⁵).

4.3 Data exists on the number of SSOs and COs imposed, and those terminated for various reasons. Figure 2 shows the proportion of SSOs and COs that were terminated in 2017 for: good progress; failure to comply with requirements; conviction of an offence; and 'other' reasons, as well as those that ran their full course. Failure to comply with requirements and conviction of an offence both represent breaches of an order. What is difficult to establish is what happens to these offenders when their order is terminated for a breach. For example, failure to comply with requirements may lead to a SSO being activated, but it is not possible to establish from the data available exactly how many this applies to, or, for example, how many receive an extension to the operational period of the SSO or a fine.

Figure 2: Percentage of terminations of suspended sentence orders and community orders by reason, 2017⁶



4.4 The Offender Rehabilitation Act 2014 expanded licence supervision, which means that since 1st February 2015 all offenders who receive a custodial sentence of more than one day and less than two years are subject to compulsory post sentence

⁵ The legislative provisions for breach of a suspended sentence order are found within Schedule 12 of the Criminal Justice Act 2003.

⁶ <https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-october-to-december-2017> (See 'Probation 2017', Table A4.24)

supervision (PSS) on their release for 12 months. In the quarter ending December 2017, approximately 73,800 offenders were subject to PSS.⁷

4.5 If this period of supervision is breached, either by failing to comply with the requirements or committing a further offence, the offender can be taken back to court and given a penalty, which might include a supervision default order to be served in the community, or a committal to custody for up to 14 days. In 2017, 1,200 offenders were given a supervision default order and around 2,500 were committed to prison for such a breach.⁸

5 KEY ASSUMPTIONS

5.1 To estimate the resource effect of a new guideline, an assessment is required of how it will affect aggregate sentencing behaviour. This assessment is based on the objectives of the new guideline, and draws upon analytical and research work undertaken during guideline development. However, assumptions must be made, in part because it is not possible precisely to foresee how sentencers' behaviour may be affected across the full range of sentencing scenarios. Any estimates of the impact of the new guideline are therefore subject to a large degree of uncertainty.

5.2 Historical data on changes in sentencing practice following the publication of guidelines can help inform these assumptions, but since each guideline is different, there is no strong evidence base on which to ground assumptions about behavioural change. Where data on current sentencing practice are available, the assumptions are based on careful analysis of how current sentencing practice corresponds to the guideline ranges presented in the proposed new guideline, and an assessment of the effects of changes to the structure and wording of the guideline. However, this has been a particular challenge for this guideline due to the lack of available information on current sentencing practice.

6 RESOURCE IMPACTS

This section should be read in conjunction with the guideline available at:

<https://www.sentencingcouncil.org.uk/publications/?s&cat=definitive-guideline>.

⁷ <https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-october-to-december-2017> (See 'Probation 2017', Table A4.14)

⁸ <https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-october-to-december-2017> (See 'Probation 2017', Table A4.1)
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/519437/offender-management-statistics-quarterly-bulletin-oct-dec-2015.pdf. Where an offender is sentenced to 14 days' custody, they will be required to serve the full 14 days.

6.1 There is existing Sentencing Guidelines Council (SGC) guidance for both breach of a SSO and CO. This guidance is in a narrative format. PSS came into force in February 2015 and there is therefore no existing guideline for breach of PSS.

6.2 The new guideline is not in the Council's usual format due to the unique features of these orders. The new guideline seeks to be much more of a functional tool for sentencers and promote consistency in dealing with breaches. For SSOs, COs, and PSS it seeks to guide sentencers as to the relevant considerations for assessing the seriousness of a breach. Based on the seriousness level, the guideline then determines the appropriate penalty.

6.3 Estimating the resource impacts of the guideline for SSOs and COs is problematic. Firstly, it is difficult to establish current sentencing practice for these orders. Although data exist on the number of COs and SSOs imposed and the number terminated for various reasons (including for a breach; see figure 2), there is no reliable data available on the action taken when a breach occurs. In particular, it is not known exactly how many breaches of these orders lead to a custodial sentence being activated, and if so, the length of the custodial sentence imposed. Also, most of these breaches are dealt with in the magistrates' court, but transcripts of judges' sentencing remarks are only available to the Council for sentences passed at the Crown Court, therefore sentencing remarks have not been available for analysis for these cases.

6.4 Secondly, some evidence suggests that some SSOs are being imposed as a more severe form of CO,⁹¹⁰ and therefore when a breach occurs the custodial sentence may not be activated as it may not have been intended that custody actually be served for the original offence.

6.5 However, actions have been taken to address these issues, as detailed later.

Data collection at magistrates' courts

6.6 If the Breach guideline is implemented as intended, we would expect to see an increase in the proportion of those SSOs which are imposed that are activated, in line with the statutory presumption that a breached SSO must be activated save for where particular legislative criteria apply. In 2016, 56,300 offenders received a SSO

⁹ More details on this research are available in the breach consultation response document.

¹⁰ The Council's Imposition of Community and Custodial Sentences definitive guideline came into force on 1 February 2017, and was developed to ensure that the principles for the imposition of these sentences (SSOs and COs) are clarified to reverse this trend. If the 'Imposition' guideline works as intended, it is expected that the number of SSOs imposed would decrease, and so the number of offenders for which the breach guideline would apply may be lower. Work with sentencers is being conducted throughout the summer of 2018 to ensure that use of the Imposition guideline is embedded in court, prior to the date when the new Breach guideline comes into force.

and so the guideline has the potential to affect a large number of people.¹¹ However, there is no reliable data available on the penalties currently imposed for breaches of COs and SSOs. There was therefore a need to collect new data to be able to provide a clearer estimate of the possible impact of the guideline on sentencing practice.

6.7 From November 2017 to the end of March 2018, a data collection exercise was conducted in a sample¹² of magistrates' courts across England and Wales. As part of this exercise, sentencers were asked to give details about how they dealt with breaches of COs and SSOs (plus four other offences). The topics covered in the data collection for breaches of COs and SSOs included:

- Details of the original order imposed, including the length and any requirements;
- Details of factors relating to the offender's compliance with the order:
 - the attitude or engagement of the offender with the order;
 - the proportion of requirements completed;
 - the proximity of the breach to the imposition of the order;
 - circumstances or offender characteristics that impeded the offender's compliance;
 - the number of previous breaches of the order; and,
 - any other factors taken into account in relation to compliance.
- Details of the relative seriousness of the new offence for which the offender was convicted (for breach of a SSO by conviction of a further offence); and,
- The penalty imposed for the breach, including, for breach of a SSO, the reasons for not activating or for reducing the custodial sentence (if applicable).

6.8 An early extract of the data was taken¹³ to inform the Council's resource assessment of the Breach guideline. The analysis is presented below.

6.9 When considering the figures presented, it is important to bear in mind that the data represent a very small proportion of all breaches, and so may not be representative of all sentencing practice. If the figures are biased then any estimate of the impact will be incorrect. There is no straightforward way of checking how

¹¹ If the Imposition guideline works as intended, it is expected that the number of SSOs imposed would decrease, and so the number of offenders for which the breach guideline would apply may be lower.

¹² In total, 80 magistrates' courts were selected to take part in the exercise.

¹³ The early extract of the data included all electronic forms submitted by the end of 9 March 2018.

representative the data are, because there is no reliable alternative source to compare with.

6.10 It should be noted that, while the data collection covered magistrates' courts only, a separate piece of work was conducted to analyse a sample of transcripts of judges' sentencing remarks for breaches of SSOs and COs sentenced at the Crown Court. This work covered only a very small sample of sentences, but found that the main points and themes were broadly similar to those presented below in the magistrates' courts data analysis.

Breach of a SSO – results from the data collection

6.11 For this assessment, 174 completed data collection forms were analysed, including 83 forms for conviction for a further offence during the operational period of the order, and 91 for failure to comply with the community requirements of the order.

6.12 Overall, 52% of offenders had their sentences activated following the breach (31% in full, and 21% with a reduction to the sentence length). The rest either had their existing order modified (38%) or had a different sentence¹⁴ imposed (10%).

6.13 When looking at the activation rate¹⁵ by the reported level of compliance (for conviction for a further offence and failure to comply with requirements, combined), the data shows that the lower the level of compliance with the order, the more likely the sentencers were to activate the order, as would be expected. The vast majority (93%) of offenders who were deemed not to have complied with the order at all had their sentences activated.

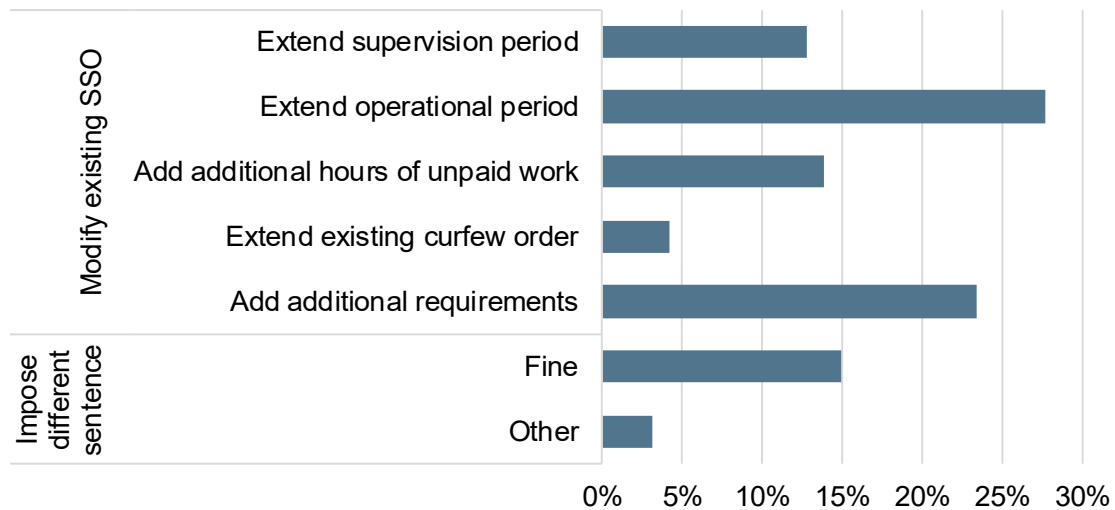
6.14 Where a sentencer indicated that they did not activate the custodial sentence at all, and instead either modified the existing order or imposed a different sentence, the most common choice was to extend the operational period of the existing order (representing around 28% of offenders for whom the custodial sentence wasn't activated).¹⁶

¹⁴ Most of the different sentences imposed were fines, although one offender was given a conditional discharge and for one it was not clear what sentence was imposed.

¹⁵ The activation rate is defined here as the proportion of forms that included activation out of all forms analysed.

¹⁶ Note that the majority of sentencers only chose one of the five options listed, but 14% chose two or three of the options (for example, by extending the supervision period *and* adding additional requirements).

Figure 3: Penalties imposed for breach of a SSO, for offenders whose custodial sentence was not activated, from an early extract of data from the magistrates' court data collection¹⁷



6.15 The second most common alternative to activating a custodial sentence was adding additional requirements (23%). Of the additional requirements imposed, the most commonly chosen was a Rehabilitation Activity Requirement (RAR).

6.16 The guideline for sentencing offenders convicted for a further offence during the operational period of the order says that “The facts/nature of the new offence is the primary consideration in assessing the action to be taken on the breach.” Where the new offence is more serious or where there are multiple new offences, the guideline tells sentencers that they should be activating the custodial sentence in full.

6.17 Overall, around 20% (17 offenders) had been convicted either for multiple new offences, or for a new offence that was more serious than the original offence. The majority of these had their custodial sentence activated, either in full (71%, 12 offenders) or with a reduction (18%, 3 offenders). The remaining 2 offenders had their existing orders modified. Under the new guideline, all of these offenders would have their sentence activated in full.

6.18 For most of the rest of this guideline, the sentencer is told to weigh up the seriousness and type of the new offence against the overall level of compliance of the offender with the order, in order to decide the appropriate sentence. For breach of a SSO by failing to comply with requirements, the compliance is the only factor to be considered by the sentencer in the new guideline.

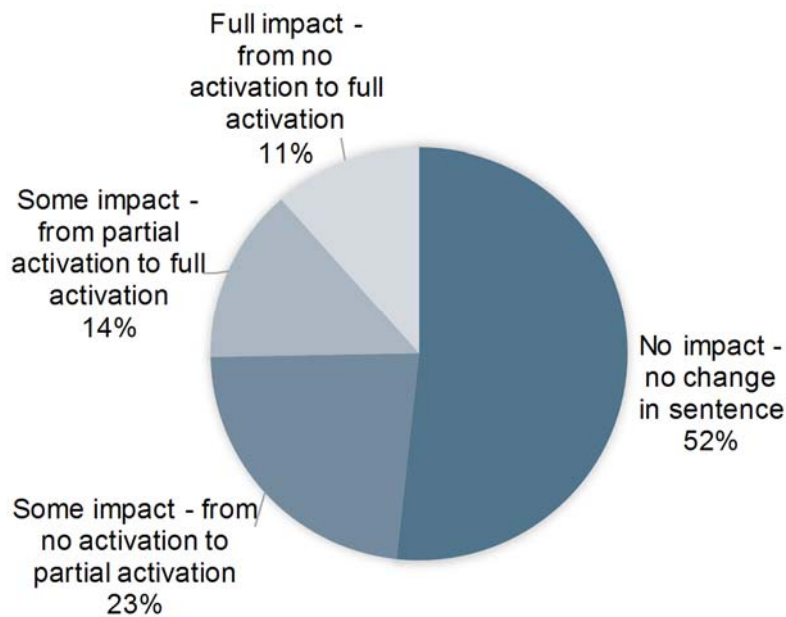
¹⁷ ‘Other’ sentences included fines and discharges, plus a very small number where the text response provided by the sentencer wasn’t clear.

Breach of a SSO – estimating changes to sentencing practice

6.19 Analysis was conducted to compare the sentence given within the magistrates' court data collection with the sentence the offender would be expected to receive under the new guideline, if sentencers use the sentencing tables only, without considering the provision for when it would be 'unjust in all of the circumstances' to activate. For example, if an offender was convicted for a further offence that was more serious than the original offence for which the order was imposed, then, under the new guideline, they would have their sentence activated in full. If the data collection indicated that an offender of this type was currently not having their sentence activated, and instead had their SSO modified in some way, then this would be recorded as "Full impact", because it is anticipated under this scenario that the offender would go from no activation currently to full activation in the future, and so the new guideline would have the fullest impact on this type of offender.

6.20 In order to assess what might happen as a result of the guideline, we have considered first the changes which might occur if sentencers only consider the sentencing tables in the guideline, and we have then considered the other factors which also need to be taken into account. So if we assume first that sentencers only consider the sentencing tables in the guideline, and do not apply the provisions for when activating the sentence would be 'unjust in all of the circumstances' then this would be expected to lead to the following changes in sentence as a result of the guideline.

Figure 4: Expected changes to sentence outcomes for breach of a SSO, if the sentencing tables are applied strictly, with no exceptions



6.21 This shows that just over half (52%) of sentences would be expected to stay the same under the new guideline as they are at present, in this scenario, while the rest (48%) would be expected to change, either by activating in full under the new guideline where previously the sentence was not activated or partially activated (activated with a reduction in the custodial term), or by partially activating now where previously the sentence was not activated at all.

6.22 However, there are several key reasons why it is expected that the actual proportion of offenders who will receive different sentences under the new guideline will be considerably lower than the 48% mentioned above:

- As explained, the 48% does not take into account the guideline's provision for when activation would be 'unjust in all of the circumstances'. As part of the data collection, when sentencers indicated that they did not activate the custodial sentence, they were asked to provide a reason. The words 'unjust' or 'not in the interests of justice' were spontaneously mentioned on numerous forms where the custodial sentence was not activated. If these types of cases continue to be assessed in this way under the new guideline, then these offenders will continue not to have their sentences activated, and the impact will be lower as the guideline provides for consideration of whether activation would be unjust after the level of penalty is identified.

- In the data collection, many offenders had a characteristic or circumstance taken into account, where the sentencer indicated that it had impeded the offender's compliance with the order.¹⁸ There were also specific reasons given for why the sentencer chose not to activate. These included mental health issues, disabilities, learning difficulties, drug and alcohol dependency, family problems including childcare responsibilities and illnesses, housing issues including homelessness, a change in circumstance of the offender, the sentencer wanting to give the offender the opportunity to complete a programme, and the sentencer stating that a programme seemed to be working. For many of the forms, multiple reasons were given for not activating; for example, one sentencer stated: "*Dissimilar offence, less serious offence, compliance with probation, proximity to end of SSO, imminent arrival of first child*". If these were sufficient reasons not to activate, and for these cases it is considered 'unjust' to activate under the new guideline, then sentencers will continue not to activate and the impact of the guideline will be lower.
- When sentencers indicated that they activated the custodial sentence but applied a reduction to the length, almost all sentencers stated that this was because of the offender's compliance in some way; either that the offender had completed some of the requirements and/ or because the offender had complied for the majority of the length of the order. If sentencers continue to consider compliance as a reason for it to be 'unjust in all of the circumstances' to activate in full, then they will continue to apply reductions as they are currently, as the guideline specifically provides for this in relation to any completed unpaid work or curfew in the penalty levels in appropriate cases.
- For breaches where the offender has committed a further offence during the operational period of the order, it is possible that some sentencers will state that the custodial sentence should be served concurrently with a custodial sentence imposed for the new offence. This would mean that if offenders were given different sentences under the new guideline, the impact would be lower than if the sentences were to be served consecutively. We have no data however on how many such sentences are served concurrently.

6.23 The analysis suggests that current sentencing practice is not overly different to the penalties recommended in the guideline, as the guideline allows for reductions to sentence lengths when there has been some compliance with the order, and for

¹⁸ Note that some of these cases are the same as those mentioned in the previous point.

sentencers to use the 'unjust' provision if there are appropriate circumstances not to activate the order. Together, these reasons demonstrate that the guideline is likely to change the penalties imposed for a lower proportion of cases than mentioned above.

6.24 It should also be noted that evidence gathered during the development of the guideline suggested that while suspended sentences may not currently be activated upon the first or second breach, repeated breaches will often result in activation of the sentence. For this reason, for some cases, the guideline may serve to only expedite the activation of custody in these cases, rather than increasing the overall volume of offenders being sent to custody. Again, due to the lack of data on current sentencing practice it is not possible to estimate the volume of such cases.

6.25 In addition, any resource impact will be affected by the length of time offenders who breach serve in custody; evidence suggests these may be short. As part of the data collection, information on the custodial sentence lengths of the original orders and the lengths of reductions given (when applicable) was collected. If offenders only serve around half of their sentence in custody (and are released from prison at the half-way point), then the data suggests that offenders with full activation of their sentence would serve an average of 8 weeks in custody, and offenders serving sentences with a reduction to their length would serve on average around 3 to 5 weeks in custody. It should be noted that this represents magistrates' court sentences only; around 60% of offenders sentenced to SSOs in 2016 were sentenced at magistrates' courts (although it should be noted that sentences served by offenders sentenced at the Crown Court are likely to be considerably higher).

6.26 If these assumptions are correct, the *proportion* of sentences that change as a result of the guideline is likely to be lower than the 48% set out above and where activated, sentences are likely to be short. Nonetheless, it is likely that some will change and therefore it is expected that there will be an overall increase in the proportion of sentences activated as a result of the guideline.

6.27 However, if implemented as intended, the Imposition guideline should lead to an overall decrease in the *number of SSOs imposed*, resulting in a decrease in the volume of offenders for whom a sentence can be activated. It is therefore possible that a reduction in the number of offenders affected may balance out the increase in the proportion of offenders whose sentences are activated.

6.28 Quantifying this is extremely difficult as there are no reliable data sources available to draw on in terms of the number of offenders sentenced each year for breaches of SSOs. The Council worked closely with the MoJ to establish whether any

additional data on breaches might be suitable for analysis, and unpublished data on sentences passed for breaches of COs and SSOs was considered. However, on review, it was determined that the unpublished data were not of sufficient quality to draw meaningful conclusions, and any conclusions drawn risked being misleading.

6.29 In conclusion, overall, there is a considerable amount of uncertainty regarding the impact of the new guideline on sentencing for breaches of SSOs. With no reliable information about volumes, no up-to-date information on the impact of the Imposition guideline, very little information about sentencing practice in this regard at the Crown Court and only limited information on sentencing at the magistrates' courts, it has not been possible, (and it is not advisable), to calculate any informative or realistic estimate of the guideline on sentencing practice or the subsequent impact on prison or probation services.

6.30 Any changes in sentencing practice as a result of the Breach guideline could have an impact on the prisons, with more offenders being sent to custody than at present. However, as discussed, sentences may be short, and work is currently being undertaken to embed the use of the Imposition guideline in courts. This should help to reduce any possible impact, and if SSOs are only imposed as intended – in line with the Council's 'Imposition' guideline – then the impact of the guideline may not be substantial.

Breach of a CO

6.31 In total, 747 completed forms were analysed to assess current sentencing practice for breaches of COs, and to estimate the impact of the guideline.

6.32 The new guideline for breach of a CO (by failing to comply with requirements) states that where the non-compliance is wilful and persistent, the sentencer should revoke the order and impose a custodial sentence. Analysis of the data collected from magistrates' courts shows that around 12% of breaches of COs were considered to be 'wilful and persistent non-compliance'.

6.33 For all other types, the sentencer is told either to revoke the order and re-sentence the original offence, add curfew requirements, add additional hours of unpaid work, extend the length of the order, add additional requirements or impose a fine. These options are too varied for it to be feasible to estimate the impact of the guideline for high, medium, low or no compliance, because it would not be possible to determine with any certainty how the penalty may be different under the new guideline.

6.34 Of those 12% of offenders whose non-compliance was deemed to be 'wilful and persistent', 59% already received a custodial sentence. The other 41%, who are not currently receiving a custodial sentence, would receive a custodial sentence under the new guideline.

6.35 Out of those offenders already receiving a custodial sentence, 53% were sentenced to immediate custody and the remaining 47% had their sentence suspended.

6.36 If we assume these proportions from the data collection apply to all offenders sentenced for breach of a CO, then overall, just under 3% of offenders will be sentenced to immediate custody when they wouldn't have been under current sentencing practice (i.e. were deemed to be wilfully and persistently non-compliant, and will receive an immediate custodial sentence under the new guideline where they had previously received a non-custodial sentence).

6.37 In a similar way as for breaches of SSOs, the number of offenders dealt with for breach of a CO at court per year was not known, so it has not been possible to estimate the likely resource impact of the guideline.

Breach of PSS

6.38 PSS was introduced in February 2015, and while there are data available on the number of recalls to custody and supervision default orders (see section 4.5), data are not available on the other penalties given for these types of breach (e.g. fines), the length of custodial sentences for those committed to custody, or how the sentences would be split across the levels of compliance in the new guideline. It is anticipated that the guideline could lead to a reduction in the requirement for prison resources, although due to a lack of data it has not been possible to estimate what the impact might be.

6.39 Firstly, the new guideline includes a range of penalties at each level of compliance. The option of a custodial penalty is only included for offenders at the lowest levels of compliance, and there are also non-custodial options available to sentencers at this level of compliance. In the impact assessment the Ministry of Justice published relating to PSS¹⁹, it was assumed that 70% of sanctions imposed following a breach would be committal to custody. However, given that offenders would be distributed across all levels of compliance in the new guideline, it is unlikely that 70% of offenders would fall into the lowest level of compliance and be committed to custody.

¹⁹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/208171/updated-rehabilitation-bill-impact-assessment.pdf

Therefore, there could be a reduction in the requirement for prison resources. However, without full data on current sentencing practice for this offence, or information about how offenders would be split across the levels of compliance in the new guideline, it has not been possible to estimate the size of this impact.

6.40 Secondly, the guideline includes a penalty of up to 7 days' committal to custody at the lowest level of compliance. No data is currently available on the sentence lengths of offenders committed to custody, however in the impact assessment the Ministry of Justice published relating to PSS, it was assumed that all offenders committed to custody would spend two weeks in custody. It is therefore possible that the new guideline may result in a reduction in the requirement for prison places due to a reduction in the time spent in custody, although without data on current sentence lengths for this offence, it has not been possible to quantify the potential impact on prison or probation resources.

7 RISKS

7.1 Two main risks have been identified:

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

7.2 An important input into developing sentencing guidelines is an assessment of current sentencing practice. The Council uses this assessment as a basis to consider whether current sentencing levels are appropriate or whether any changes should be made. Inaccuracies in the Council's assessment could cause unintended changes in sentencing practice when the new guideline comes into effect. This is a particular issue for these guidelines, due to the limited data available.

7.3 The risk was mitigated by information gathered by the Council as part of the guideline development and consultation phase. This included providing case scenarios as part of the consultation exercise which were intended to test whether the guideline had the intended effect, and inviting views on the guideline. However, there were limitations on the number of factual scenarios which could be explored, so the risk cannot be fully eliminated.

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

7.4 If sentencers do not interpret the guideline as intended, this could cause a change in the average severity of sentencing, with associated resource effects.

7.5 The Council takes a number of precautions in issuing new guidelines to try to ensure that judges interpret them as intended. The penalties in the breach of a SSO

guideline are intended to align with legislative provisions and the presumption that a suspended sentence will be activated, while taking into account what sentencers consider as unjust in all of the circumstances to provide for non-activation where this is appropriate. The evidence used to develop the guidelines was gathered in discussions with sentencers and probation officers during consultation stage research.

7.6 The Council also uses data, where available, 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.

7.7 Following the release of the guideline, explanatory material will be provided to read alongside the guideline, and work is being conducted to ensure that the Imposition guideline is working, so that SSOs are only imposed as intended (with a possible decrease in the imposition of SSOs, as a result).

7.8 However, the Council will monitor both the Imposition and Breach guidelines to try and mitigate the risks identified, including the risk that the decrease in SSOs is not realised, and provide more information on their impact. A post-guideline data collection in magistrates' courts, similar to the exercise mentioned in paragraph 6.7, will be conducted in 2019/20, to collect data once the guideline is in place. This will help the Council to monitor the impact of the guideline, compare sentencing practice before and after the guideline is in force, and to ensure any divergence from its aims is identified and rectified. In due course, an evaluation of the impact of the guideline will be conducted and published, incorporating the data collected.