

## FINAL RESOURCE ASSESSMENT: BREACH OF DISQUALIFICATION FROM ACTING AS A DIRECTOR AND BREACH OF DISQUALIFICATION FROM KEEPING AN ANIMAL

### 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.<sup>1</sup>

### 2 RATIONALE AND OBJECTIVES FOR NEW GUIDELINE

2.1 Guidelines are not currently available for all types of breach, and there is variation in the format of the guidelines which do exist and their scope, with some guidance available to magistrates' courts in the form of Magistrates' Courts Sentencing Guidelines but not in the Crown Court. A survey of 216 magistrates and district judges was conducted in November 2014, to gather information on sentencing breaches and the usefulness of current breach guidelines.<sup>2</sup> Respondents indicated that they would like a comprehensive summary of all breach of order sentence guidelines, presented in a consistent format and clearly identifiable as a breach guideline.

2.2 The Council decided that breach guidelines should be issued as a single definitive guideline to consolidate and improve guidance and ensure a more consistent approach to sentencing breaches of orders. The Council decided to include the highest volume offences and those where it was thought consistency of approach to sentencing could be achieved through a guideline. The format of the breach guidelines brings them into line with the rest of the Sentencing Council guidelines where possible, using the stepped approach to sentencing and assessing harm and culpability, and any factors increasing seriousness.

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<sup>1</sup> Coroners and Justice Act 2009 section 127.

<sup>2</sup> The sample was self selected, and relatively small, meaning that we cannot generalise from these findings to the general population of magistrates and district judges. The findings do, however, give us an indication of how an engaged and interested group use the current guidance and their needs and preferences with reference to future guidelines.

### 3 SCOPE

3.1 This resource assessment covers the following offences:

- Breach of disqualification from acting as a director; and,
- Breach of disqualification from keeping an animal.

3.2 The maximum sentence for breach of disqualification from acting as a director, as set out in the Company Directors Disqualification Act 1986, is two years' custody in the Crown Court and six months' in the magistrates' court.

3.3 The maximum sentence in the Animal Welfare Act 2006, for breach of disqualification from keeping an animal, is 51 weeks' imprisonment. However, as this is a summary only offence, and magistrates' courts sentencing powers have not been extended to 12 months, the usual six month maximum applies.

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

### 4 CURRENT SENTENCING PRACTICE

#### Breach of disqualification from acting as a director

4.1 Since 2006 the number of adult offenders sentenced for breach of disqualification from acting as a director has remained fairly low, with fewer than 50 offenders sentenced each year (see figure 1).<sup>3</sup> In 2016, approximately 30 adult offenders were sentenced for this offence. The majority of offenders were sentenced in the Crown Court over the last decade (65% over the period 2006-2016).

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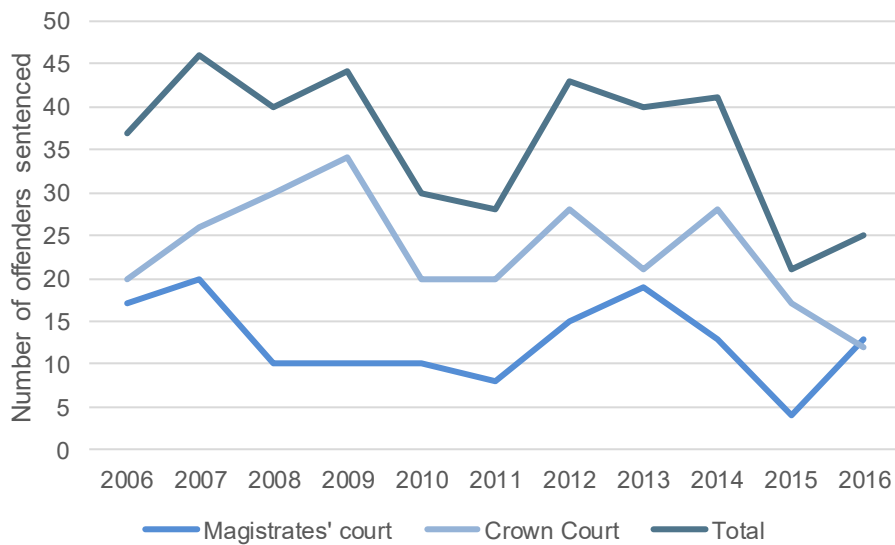
<sup>3</sup> Source: Ministry of Justice Court Proceedings Database (CPD). For details of data collection and methodology please see:

<https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2017>

The figures given relate to persons for whom these offences were the principal offences for which they were dealt with. When a defendant has been found guilty of two or more offences it 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.

Every effort is made to ensure that the figures presented are accurate and complete. However, it is important to note that these data have been extracted from large administrative data systems generated by the courts and police forces. As a consequence, care should be taken to ensure data collection processes and their inevitable limitations are taken into account when those data are used.

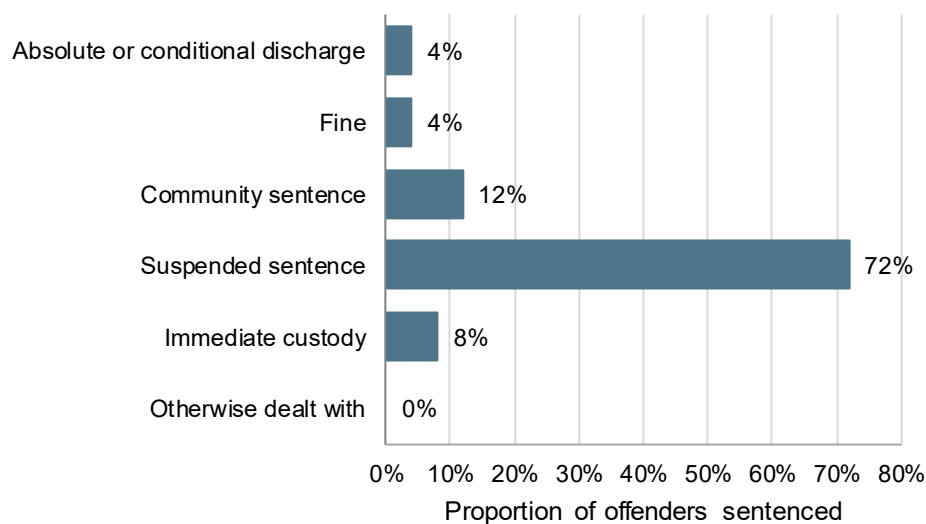
**Figure 1: Number of adult offenders sentenced for breach of disqualification from acting as a director, 2006-2016**



**Source: Ministry of Justice CPD**

4.2 Suspended sentences were the most common sentence in 2016 (comprising over 70 per cent of offenders sentenced), followed by community sentences (see figure 2). Fewer than five offenders were sentenced to immediate custody.

**Figure 2: Proportion of adult offenders sentenced for breach of disqualification from acting as a director, by sentence outcome, 2016<sup>4</sup>**



**Source: Ministry of Justice CPD**

<sup>4</sup> The category 'Otherwise dealt with' includes: one day in police cells; disqualification order; restraining order; confiscation order; travel restriction order; disqualification from driving; recommendation for deportation; compensation; and other miscellaneous disposals.

4.3 During the period 2009 to 2015<sup>5</sup>, the average<sup>6</sup> custodial sentence length (ACSL) for this offence was one year (prior to any guilty plea reduction).

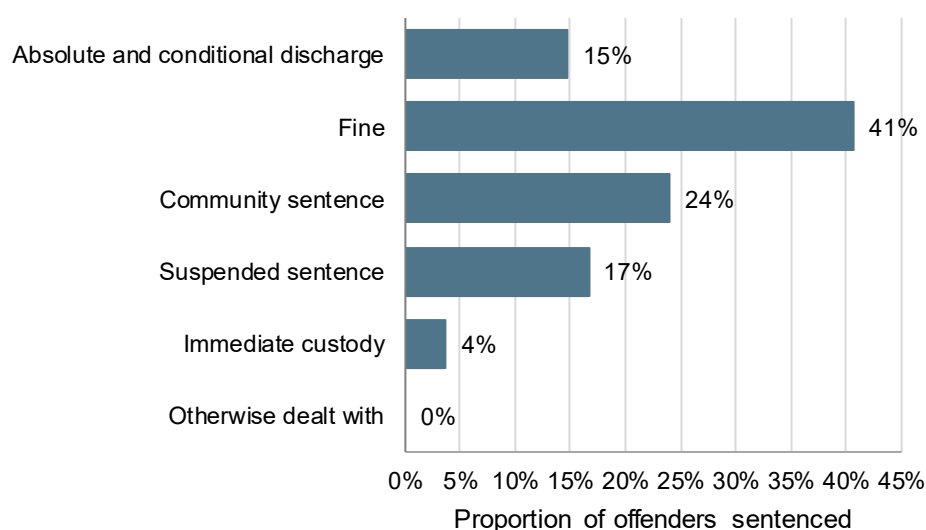
#### Breach of disqualification from keeping an animal

4.4 Between 2009 and 2013 the number of adult offenders sentenced for breach of disqualification from keeping an animal increased from approximately 40 in 2009 to 100 in 2013, before decreasing to 50 in 2016. The vast majority of these offences are sentenced in magistrates' courts (all offenders sentenced in 2016 were sentenced in the magistrates' court).

4.5 Fines were the most common sentence in 2016 (comprising around 40 per cent of offenders sentenced), followed by community sentences and suspended sentences (see figure 3). Two offenders received an immediate custodial sentence.

4.6 During the period 2009 to 2015, the ACSL for this offence was four months (prior to any guilty plea reduction).<sup>6</sup>

**Figure 3: Proportion of adult offenders sentenced for breach of disqualification from keeping an animal, by sentence outcome, 2016<sup>7</sup>**



**Source: Ministry of Justice CPD**

<sup>5</sup> This has been estimated based on the stage at which offenders entered a plea and the reduction given, as found in the Crown Court Sentencing Survey 2014. These estimates are provided for the period 2009-2015, which reflects recent sentencing practice where the CCSS reductions are considered to be robust.

<sup>6</sup> The mean has been taken as the average throughout this document.

<sup>7</sup> The category 'Otherwise dealt with' includes: one day in police cells; disqualification order; restraining order; confiscation order; travel restriction order; disqualification from driving; recommendation for deportation; compensation; and other miscellaneous disposals.

## 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. The assumptions thus have to be based on careful analysis of how current sentencing practice corresponds to the guideline ranges presented in the new guideline, and an assessment of the effects of changes to the structure and wording of the guideline.

5.3 The resource impact of the new guideline is measured in terms of the change in sentencing practice that is expected to occur as a result of the new guideline. Any future changes in sentencing practice which are unrelated to the publication of the new guidelines are therefore not included in the estimates.

5.4 In developing sentence levels for the different breach guidelines existing guidance and data on current sentence levels has been considered. A number of first instance and Court of Appeal transcripts have been reviewed for each breach, but these generally reflect cases at the upper end of seriousness. Transcripts are not available for magistrates' court proceedings where many of these cases, and almost all breaches of disqualification from keeping an animal, are sentenced.

5.5 During the consultation process views were sought regarding the potential impact of the draft guideline. Findings from consultation stage research were also considered in the development of the final guideline, to mitigate the risk of the guideline having an unintended impact.

5.6 While data exists on the number of breaches and the sentences imposed, it is difficult to establish how current breach cases would be categorised across the levels of culpability and harm in the new guidelines, due to a lack of data available regarding the seriousness of current cases, and the low number of cases. As a consequence, it has not always been possible to ascertain how sentence levels may change under the new guideline.

5.7 It therefore remains difficult to estimate with any precision the impact the guideline may have on prison and probation resources.

## 6 RESOURCE IMPACTS

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

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

6.1 The guidelines have been written with current sentencing practice in mind, therefore it is not anticipated there will be any impact on correctional resources. In addition, due to the low volume of these offences and the fact that only a very small proportion of offenders receive a custodial sentence, any potential impact would be minimal.

## 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.

7.3 This risk is mitigated by information that is gathered by the Council as part of the guideline development and consultation phase.

### **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 (including the potential for anticipated changes to some categories of the guideline to affect other categories where no change was intended).

7.5 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, where it exists, in conjunction with Council members' experience of sentencing. Views gathered as part of the consultation and consultation stage research are also considered when developing the definitive guideline.

7.6 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.