

## **FINAL RESOURCE ASSESSMENT: BREACH OF A PROTECTIVE ORDER, BREACH OF A CRIMINAL BEHAVIOUR ORDER, BREACH OF A SEXUAL HARM PREVENTION ORDER, AND FAILING TO COMPLY WITH A NOTIFICATION REQUIREMENT**

### **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 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.

---

<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 a Protective Order;
- Breach of a Criminal Behaviour Order (or Anti Social Behaviour Order);
- Breach of a Sexual Harm Prevention Order (or Sexual Offences Prevention Order); and,
- Failing to comply with a notification requirement.

3.2 These offences have been grouped together for the purpose of this resource assessment as they share the same statutory maxima of five years' imprisonment and involve the protection of individuals or the wider community in some way.

3.3 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 a Protective Order

4.1 Restraining orders were introduced in 1997, and in 2009 amendments to legislation enabled the court to impose them in a much wider range of circumstances.<sup>3</sup> Non-molestation orders protect relevant persons in family proceedings. Collectively these are known as 'protective orders'.

4.2 From 2009 onwards, there was a substantial increase in the number of offenders sentenced for breaching each of these orders.<sup>4</sup> Prior to 2009 breaches of these orders were excluded from the count of court proceedings due to recording issues, and so the increase seen is partly a result of improvements in recording practice.<sup>5</sup> However, it most likely also reflects an increase in the number of restraining

---

<sup>3</sup> [http://www.cps.gov.uk/legal/p\\_to\\_r/restraining\\_orders/](http://www.cps.gov.uk/legal/p_to_r/restraining_orders/)

<sup>4</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>

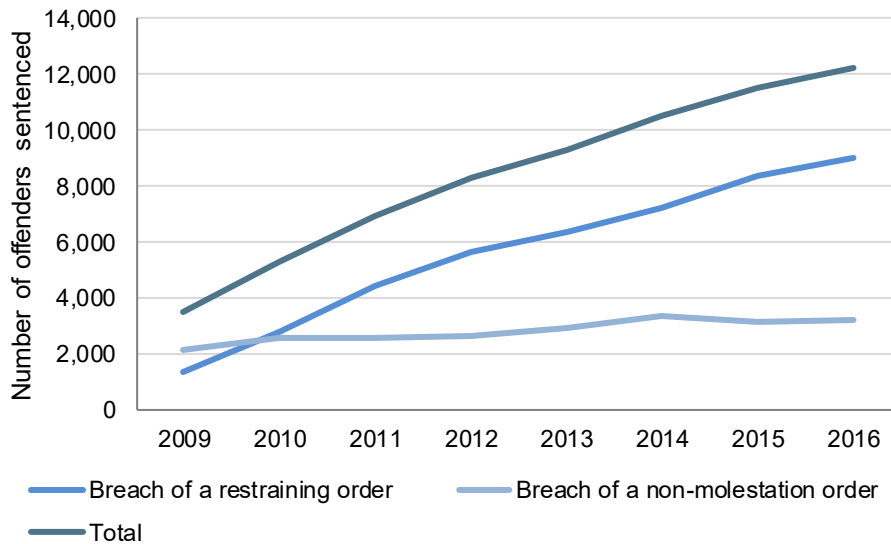
The figures given relate to persons for whom these offences were the principal offences for which they were dealt with. When a defendant has been found guilty of two or more offences it is the offence for which the heaviest penalty is imposed. Where the same disposal is imposed for two or more offences, 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.

<sup>5</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/524418/a-guide-to-criminal-justice-statistics.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/524418/a-guide-to-criminal-justice-statistics.pdf)

orders imposed following the amendments made to the legislation in 2009. Figure 1 shows the number of offenders sentenced for breaching these orders. In 2016 the majority (89 per cent) of these breaches were sentenced in the magistrates' court.

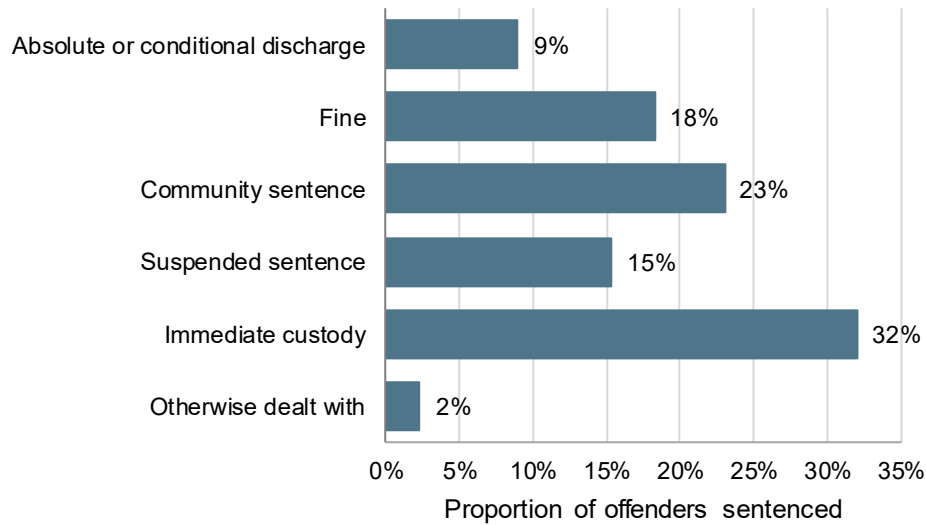
**Figure 1: Number of adult offenders sentenced for breach of a protective order, 2009-2016**



**Source: Ministry of Justice CPD**

4.3 Figure 2 shows the proportion of offenders sentenced for breaching a protective order by sentence outcome. In 2016 approximately 3,900 offenders received immediate custody (32 per cent) and 2,800 offenders received a community sentence (23 per cent).

**Figure 2: Proportion of adult offenders sentenced for breach of a protective order, by sentence outcome, 2016<sup>6</sup>**



**Source: Ministry of Justice CPD**

4.4 Figure 3 shows the distribution of custodial sentence lengths in 2015<sup>7</sup>, for those who received an immediate custodial sentence. Offenders who plead guilty are given a reduction in their sentence. In general, the earlier an offender enters their plea in the court proceedings, the larger the reduction in sentence. In order to compare current sentence lengths with those in the new guideline, it is necessary to look at sentence lengths before any reduction for a guilty plea.

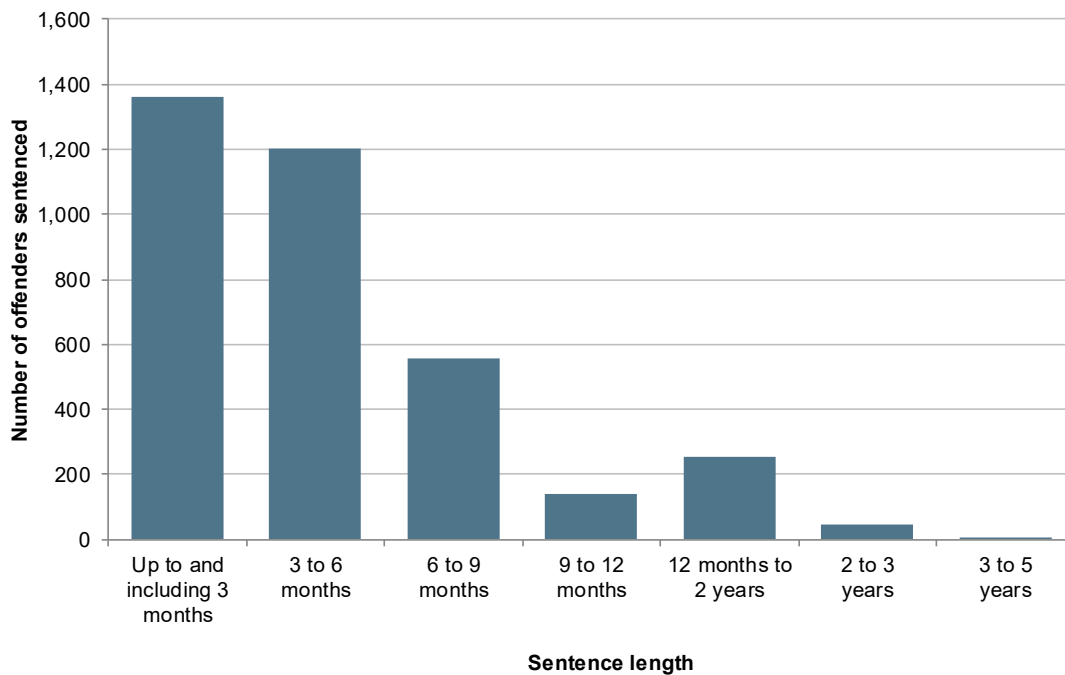
4.5 Figure 3 shows that approximately 2,600 offenders (72 per cent) received a sentence up to and including six months, and only around 50 offenders (one per cent) received a sentence of more than two years, before any reductions for a guilty plea. The average custodial sentence length<sup>8</sup> was six months (prior to any guilty plea reduction). These figures are based on the estimated pre-guilty plea sentence length.

<sup>6</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.

<sup>7</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 calendar year 2015, which reflects recent sentencing practice where the CCSS reductions are still considered to be robust.

<sup>8</sup> The average custodial sentence length is the average (mean) length of determinate custodial sentences.

**Figure 3: Number of adult offenders sentenced to immediate custody for breach of a protective order, by estimated sentence length, before any reductions for a guilty plea, 2015<sup>9</sup>**



**Source: Ministry of Justice CPD data adjusted with the Crown Court Sentencing Survey 2014**

### **Breach of a Criminal Behaviour Order (or Anti Social Behaviour Order)**

4.6 Anti Social Behaviour Orders (ASBOs) were introduced by section 1 of the Crime and Disorder Act 1998 in England and Wales and came into force in April 1999. In October 2014 ASBOs on conviction were replaced by Criminal Behaviour Orders (CBOs; through the Anti-social Behaviour, Crime and Policing Act 2014), although existing ASBOs are still in force.<sup>10</sup>

4.7 Breach of a CBO or an ASBO is a criminal offence in its own right. Since 2009 there has been a reduction in the number of adults sentenced for breaching an ASBO (see figure 4).<sup>11</sup> For breach of a CBO, data is only available from 2015. The majority of these breach offences (96 per cent in 2016) are sentenced at the magistrates' court.

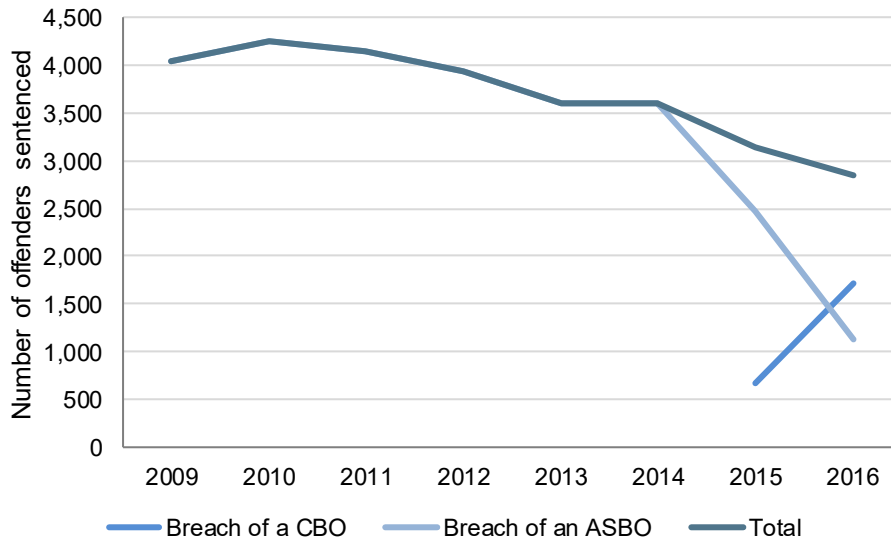
<sup>9</sup> Sentence length intervals do not include the lower bound, but do include the upper bound sentence length. For example, the category 'up to and including 3 months' includes sentence lengths less than or equal to three months, and '3 to 6' includes sentence lengths over 3 months, and up to and including 6 months.

<sup>10</sup> The latest published data relates to ASBOs issued up to the end of December 2013. These relate to ASBOs issued on application and conviction:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/355103/anti-social-behaviour-order-statistical-notice-2013.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/355103/anti-social-behaviour-order-statistical-notice-2013.pdf)

<sup>11</sup> Due to recording issues data is only available back to 2009.

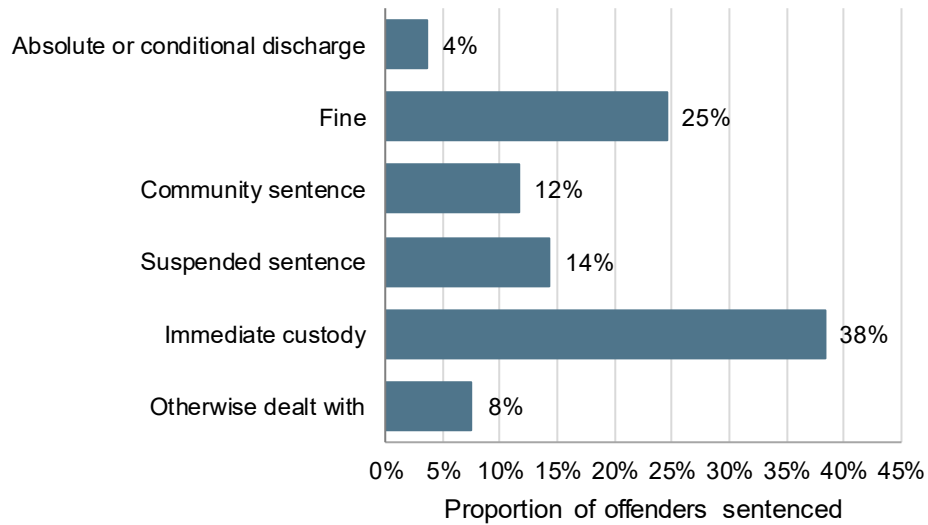
**Figure 4: Number of adult offenders sentenced for breach of a Criminal Behaviour Order or an Anti Social Behaviour Order, 2009-2016**



**Source: Ministry of Justice CPD**

4.8 Figure 5 shows the proportion of offenders sentenced for breaching a CBO or an ASBO by sentence outcome. Current sentences for these breaches are generally equally split between custodial and non-custodial. In 2016 approximately 38 per cent of offenders received immediate custody (1,100 offenders) and 14 per cent received a suspended sentence (around 410 offenders). The remainder of sentences were split between fines (25 per cent), community sentences (12 per cent), discharges (four per cent) and 'otherwise dealt with' (eight per cent).

**Figure 5: Proportion of adult offenders sentenced for breach of a Criminal Behaviour Order or an Anti Social Behaviour Order, by sentence outcome, 2016**



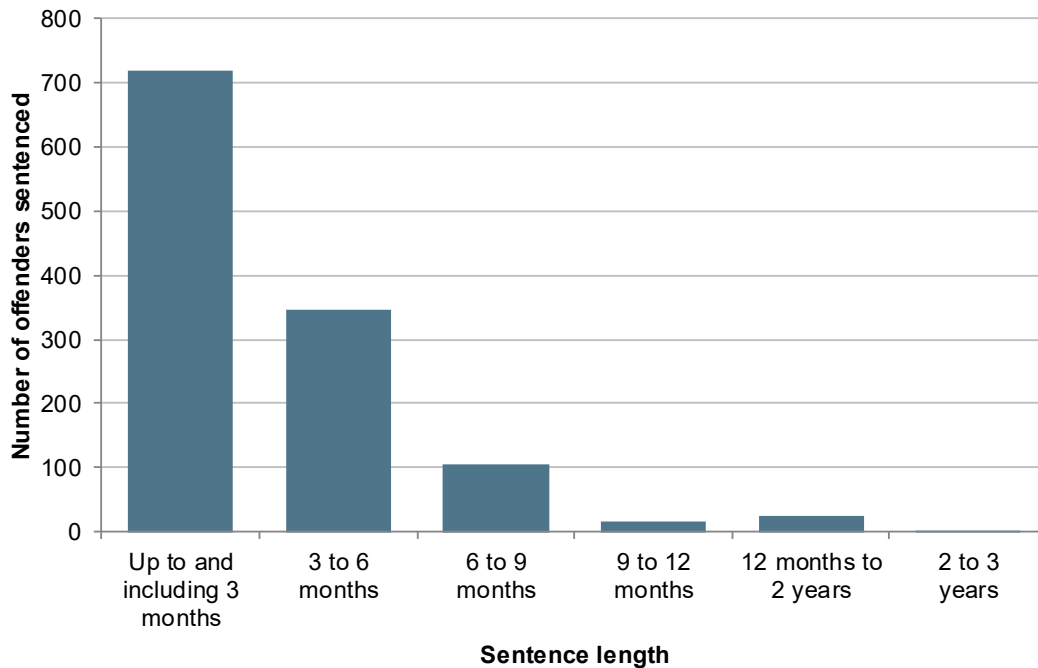
**Source: Ministry of Justice CPD**

4.9 Figure 6 shows the distribution of custodial sentence lengths in 2015<sup>12</sup>, for those who received an immediate custodial sentence. These are based on estimated pre-guilty plea sentence lengths. Eighty-eight per cent of offenders received a sentence up to and including six months (approx 1,100 offenders), and only two per cent (30 offenders) received a sentence of over one year, before any reductions for a guilty plea. The average custodial sentence length (prior to any guilty plea reduction) was four months.

---

<sup>12</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 calendar year 2015, which reflects recent sentencing practice where the CCSS reductions are still considered to be robust.

**Figure 6: Number of adult offenders sentenced to immediate custody for breach of a Criminal Behaviour Order or an Anti Social Behaviour Order, by estimated sentence length, before any reductions for a guilty plea, 2015**



**Source: Ministry of Justice CPD data adjusted with the Crown Court Sentencing Survey 2014**

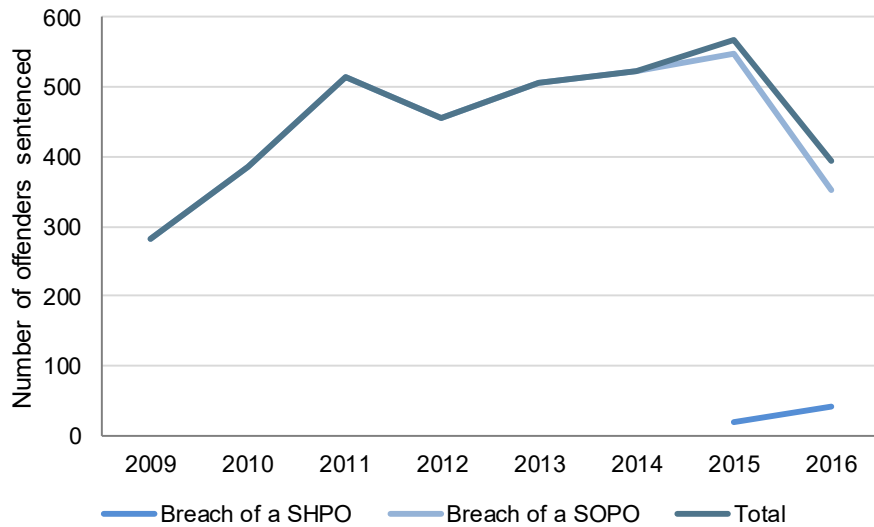
### **Breach of a Sexual Harm Prevention Order (or Sexual Offences Prevention Order)**

4.10 Sexual Offences Prevention Orders (SOPOs) were introduced in the Sexual Offences Act 2003. The Anti-social Behaviour, Crime and Policing Act 2014 replaced these with Sexual Harm Prevention Orders (SHPOs).

4.11 There is limited data on breaches of SOPOs prior to 2009, due to data recording issues. Between 2009 and 2015, with the exception of a downward shift in volumes between 2011 and 2012, the number of adult offenders sentenced for breach of a SOPO increased, from around 280 in 2009 to approximately 550 in 2015 (see figure 7). The number then decreased, to 350 offenders sentenced in 2016. In 2015 around 20 offenders were sentenced for breaching a SHPO, while 40 offenders were sentenced for this offence in 2016. The majority of these cases (89 per cent in 2016) are sentenced in the Crown Court.



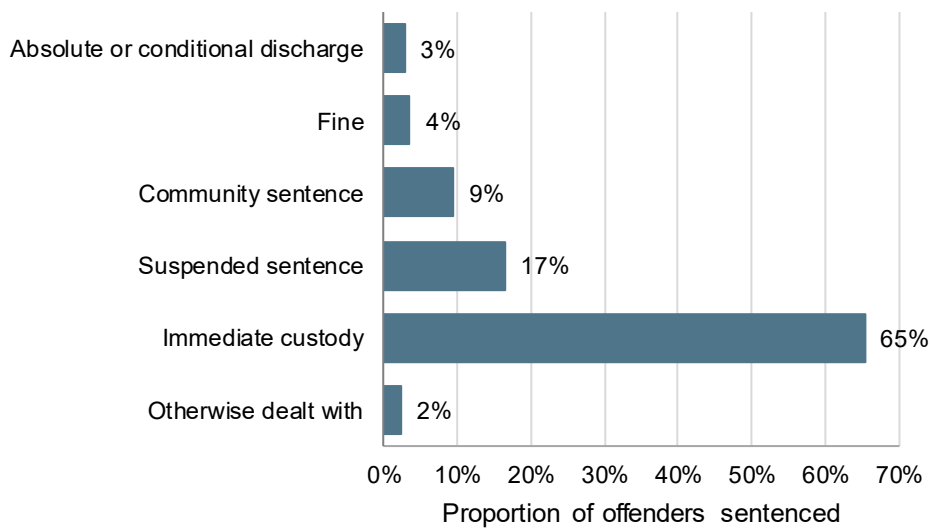
**Figure 7: Number of adult offenders sentenced for breach of a Sexual Harm Prevention Order or Sexual Offences Prevention Order, 2009-2016**



**Source: Ministry of Justice CPD**

4.12 Figure 8 shows the proportion of offenders sentenced for breaching a SHPO or SOPO by sentence outcome. In 2016 the most common sentencing outcome was immediate custody (approximately 260 offenders or 65 per cent). The second and third most common outcomes were suspended sentences (approximately 70 offenders or 17 per cent) and community sentences (around 40 offenders or nine per cent).

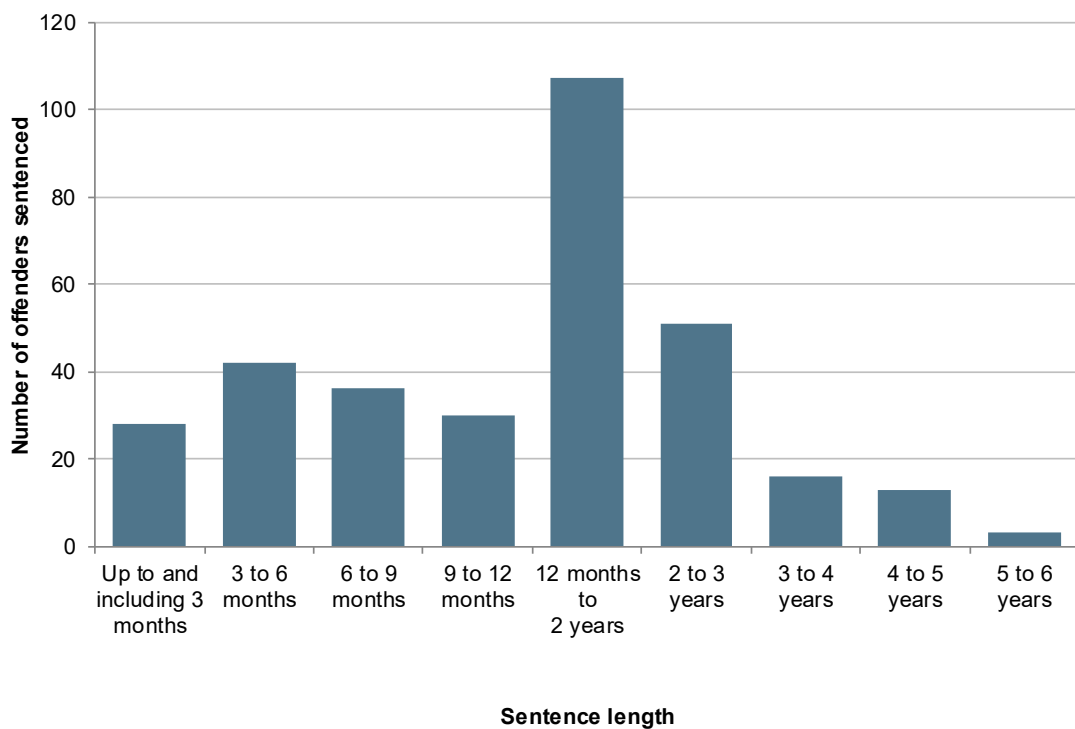
**Figure 8: Proportion of adult offenders sentenced for breach of a Sexual Harm Prevention Order or Sexual Offences Prevention Order, by sentence outcome, 2016**



**Source: Ministry of Justice CPD**

4.13 Figure 9 shows the distribution of custodial sentence lengths in 2015<sup>13</sup>, for those who received an immediate custodial sentence. This is based on the estimated pre-guilty plea sentence length. It suggests that a high proportion of breaches of SOPOs and SHPOs are at the more serious end of the scale, with 58 per cent of offenders (190 cases) receiving a sentence of over one year. The average custodial sentence length was just over 18 months (prior to any guilty plea reduction).

**Figure 9: Number of adult offenders sentenced to immediate custody for breach of a Sexual Harm Prevention Order or Sexual Offences Prevention Order, by estimated sentence length, before any reductions for a guilty plea, 2015**



**Source: Ministry of Justice CPD data adjusted with the Crown Court Sentencing Survey 2014**

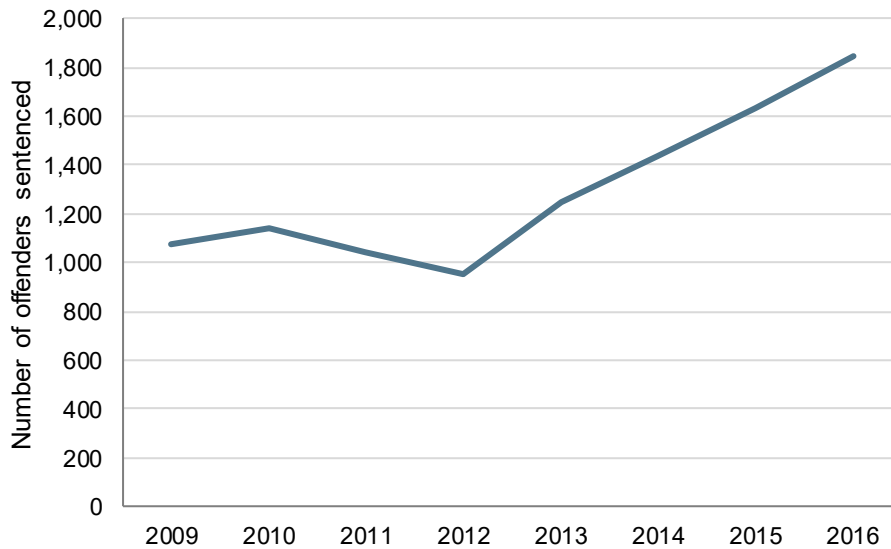
#### **Failing to comply with a notification requirement**

4.14 The notification requirements for sex offenders were introduced in the Sex Offenders Act 1997. Between 2010 and 2012 the number of offenders sentenced for failing to comply with a notification requirement decreased (see figure 10). However, since 2012 there has been an increase, from approximately 950 in 2012 to 1,800 in

<sup>13</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 calendar year 2015, which reflects recent sentencing practice where the CCSS reductions are still considered to be robust.

2016. The majority (86 per cent in 2016) of these breaches were sentenced in magistrates' courts.

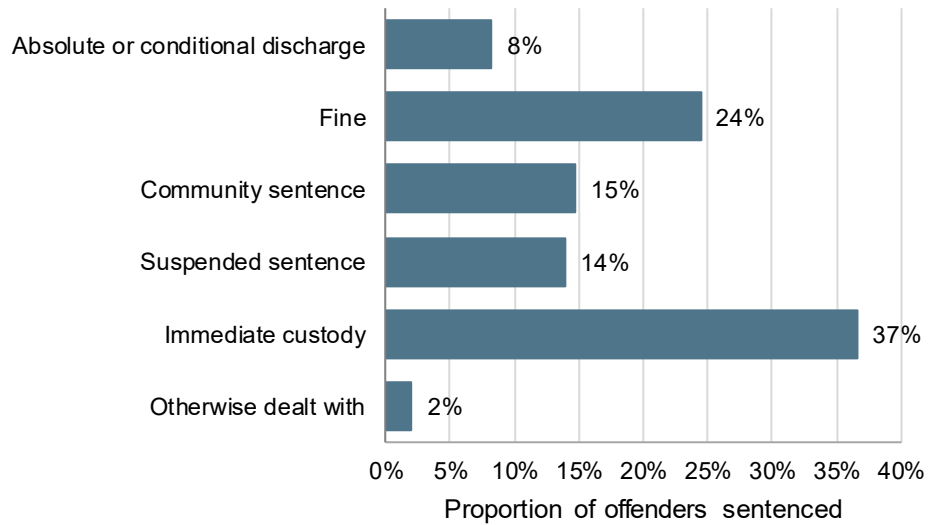
**Figure 10: Number of adult offenders sentenced for failing to comply with a notification requirement, 2009-2016**



**Source: Ministry of Justice CPD**

4.15 Figure 11 shows the proportion of offenders sentenced for failing to comply with a notification requirement by sentence outcome. In 2016, immediate custody was the most common sentencing outcome for this offence (37 per cent of offenders sentenced), with around a quarter (24 per cent) of offenders receiving a fine.

**Figure 11: Proportion of adult offenders sentenced for failing to comply with a notification requirement, by sentence outcome, 2016**

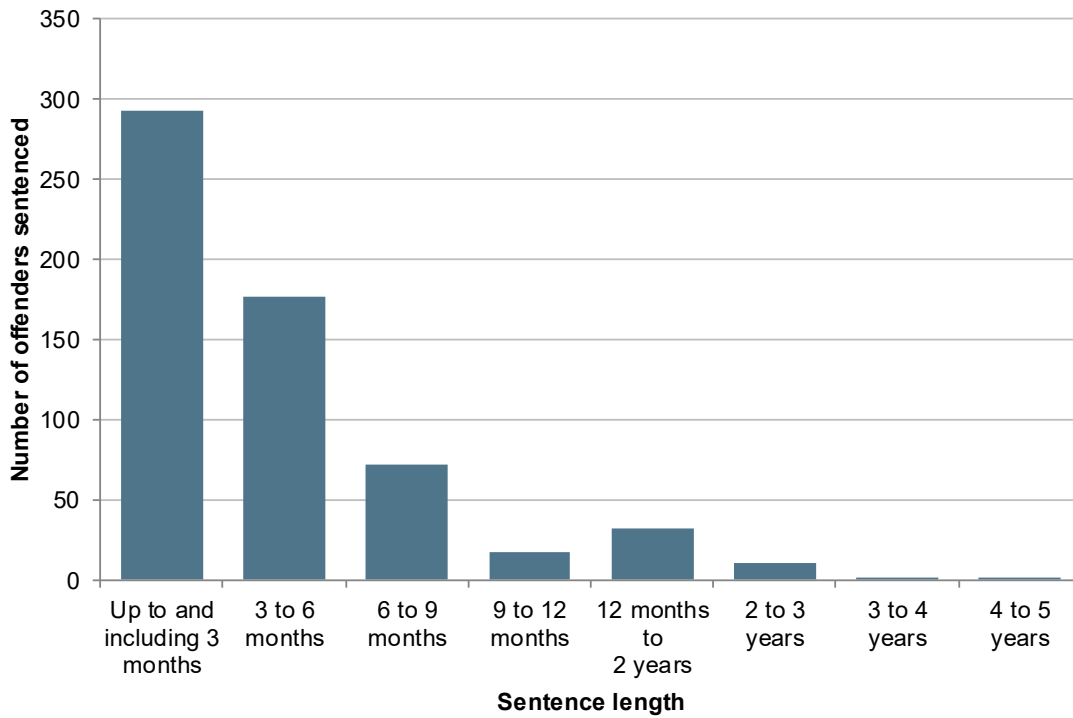


**Source: Ministry of Justice CPD**

4.16 Figure 12 shows the distribution of custodial sentence lengths in 2015<sup>14</sup>, for those who received an immediate custodial sentence. This is based on the estimated pre-guilty plea sentence length. Seventy-eight per cent of offenders (470 cases) received a sentence up to and including six months, and only two per cent (around 10 cases) received a sentence of over two years, before any reductions for a guilty plea. The average custodial sentence length was just under five and a half months (prior to any guilty plea reduction).

<sup>14</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 calendar year 2015, which reflects recent sentencing practice where the CCSS reductions are still considered to be robust.

**Figure 12: Number of adult offenders sentenced to immediate custody for failing to comply with a notification requirement, by estimated sentence length, before any reductions for a guilty plea, 2015**



**Source: Ministry of Justice CPD data adjusted with the Crown Court Sentencing Survey 2014**

## **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 have been considered. Transcripts of cases and news articles have also been reviewed, although these generally reflect more serious breaches attracting custody.

5.5 During the consultation process views were sought regarding the potential impact of the draft guideline. Findings from the 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 In addition, 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. 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 guidelines available at: <http://www.sentencingcouncil.org.uk/publications/?cat=definitive-guideline&s&topic>.

### **Breach of a Protective Order**

6.1 The existing Sentencing Guideline Council's guideline for breach of a protective order (which includes breach of a restraining order and breach of a non-molestation order) contains five categories reflecting the 'nature of activity'. These categories are based on the number of breaches and the harm caused, but do not take account of the culpability of the offender. The new guideline adopts the Sentencing Council's standard approach. It is based on three levels of harm and three levels of culpability.

6.2 In general, the sentencing ranges have been set with current sentencing practice in mind and therefore it is not anticipated that there will be any impact on

prison and probation resources in the majority of cases. There are two exceptions which may lead to higher sentences for some breaches of a restraining/non-molestation order.

6.3 Firstly, the guideline illustrates the sentence ranges differently to the existing guideline. Whereas the existing guideline presents the sentence in cases of the most serious harm as “more than 1 year”, the new guideline has a starting point of 2 years and a range of 1 to 4 years, for the highest level of harm and the highest level of culpability. Findings from consultation stage research suggest that for cases in this highest category of offending, there could be an uplift to sentences. The Crown Court Sentencing Survey (CCSS) suggests that around 15 per cent of breaches of protective orders sentenced in the Crown Court fell into category 1 in the existing guideline - the ‘most serious’ category.<sup>15</sup> It is not possible to estimate how cases would be distributed across the categories of seriousness in the new guideline, but it is expected that cases falling into category 1 in the existing guideline would fall under categories A1 or B1 in the new guideline. It is therefore likely that a small number of cases categorised as A1 in the new guideline would receive a higher sentence. Given the limited data available in this area, it is not possible to quantify the exact number that this might apply to and consequently the correctional resources required. In addition, any costs to correctional resources incurred may be offset by the fact that category C1<sup>16</sup> has a lower starting point and range than the current top harm category.

6.4 Secondly, under the new guideline, culpability category A (the most serious category) includes very serious and/or persistent breaches, whereas the existing guideline mainly focuses on the number of breaches. As a result, an offender who breaches an order by resuming a relationship with the protected subject of an order, but doesn’t cause any harm because the protected subject is willingly in contact, will be classified as a category A3 or B3 breach under the new guideline (high or medium culpability, as it is a deliberate breach, but one which causes low harm). Under the existing guideline this breach would attract a starting point of a medium level community order as it reserves custodial sentences for offences involving violence. Under the new guideline this offence would attract a starting point of 12 weeks’ custody or a high level community order. Due to the context of this type of situation and the characteristics of domestic abuse, the Council felt that these types of offences should be treated more severely than they currently are to enhance the efficacy of the

---

<sup>15</sup> The Crown Court Sentencing Survey (CCSS) collected information on the seriousness of the offence, which was categorised as Level 1 – most serious, through to Level 4 – least serious. This proportion is based on the CCSS 2013 and 2014.

<sup>16</sup> This is the category with the highest level of harm but the lowest level of culpability.

restraining order. In addition, it was felt that the sentence levels for this offence should not be lower than the same category for breach of an ASBO/CBO due to the risk that inferences could be drawn regarding the relative seriousness of these offences. This category will also capture deliberate breaches where the breach was very serious or deliberate and harm may not have been caused but could have been intended. This means that some offenders currently receiving a community order could instead receive a short custodial sentence under the new guideline. It is again not possible to estimate the number of breaches which may fall into this category, due to a lack of data. However, a review of transcripts suggests the numbers are not likely to be large.

### **Breach of a Criminal Behaviour Order (or Anti Social Behaviour Order)**

6.5 The existing Sentencing Guideline Council's guideline for breach of an ASBO contains three categories reflecting the 'nature of failure and harm'. These categories are based on the level of harassment, alarm or distress and the harm caused, but do not take account of the culpability of the offender. The new guideline adopts the Sentencing Council's standard approach. It is based on three levels of harm and three levels of culpability.

6.6 In general, the sentencing ranges have been set with current sentencing practice in mind and therefore it is not anticipated that there will be any impact on prison and probation resources in the majority of cases. The exception is for the most serious breach cases that fall in categories A1, A2 and B1, where there has been an extension to the category ranges, and also at the bottom of the distribution where there may actually be a reduction in sentence severity.

6.7 The starting point for the most serious level of breach in the existing guideline is 26 weeks, with a sentencing range of up to 2 years' custody. The starting points for categories A1, A2 and B1 in the new guideline are higher than the starting point for the highest level of seriousness in the old guideline (at 2 years for category A1 and 1 year for categories A2 and B1). In addition, the sentencing range for category A1 in the new guideline goes up to 4 years. Looking at sentencing practice over the period 2011-2015, on average around three per cent of immediate custodial sentences were over 1 year in length and under one per cent (or nine offenders sentenced) were 2 years or over (prior to any reduction for a guilty plea).<sup>17</sup> The CCSS suggests that around 23 per cent of breaches of ASBOs sentenced in the Crown Court fall into category 1 - the

---

<sup>17</sup> It is worth noting that over the last five years there has been a reduction in the number of sentences of two years or over.



'most serious' category.<sup>18</sup> It is not possible to estimate how these cases might be distributed across the three levels of culpability, but it is expected that cases falling into category 1 in the existing guideline would fall under categories A1 or B1 in the new guideline, therefore the CCSS data suggests that there may be an increase to sentences at the most serious levels of offending.

6.8 However, as with protective orders, the new guideline should make it harder for offenders to get into the top level of seriousness. Under the existing guideline offenders would find themselves in the most serious harm category if they caused harassment, alarm or distress or where such harm was intended. Under the new guideline an offender would have to cause very serious harm or distress to an individual, or demonstrate a continuing risk of serious criminal behaviour or anti-social behaviour, in order to get into the most serious harm category (category 1). As a consequence, it is anticipated that this will offset any impact due to the extension to the category sentencing range and no further uplift in sentences is expected.

6.9 In the existing guideline, only cases where 'no' harm is caused are categorised in the bottom harm category. However, under the new guideline offenders causing 'little or no' harm would be classified in the lowest harm category. This may see some offenders previously classified in the middle harm category (category 2), now being in the lowest harm (category 3) and a corresponding reduction in their sentence.

### **Breach of a Sexual Harm Prevention Order (or Sexual Offences Prevention Order)**

6.10 There is no existing guideline available for breach of a Sexual Harm Prevention Order (SHPO) or Sexual Offences Prevention Order (SOPO). Therefore in developing sentence levels and assessing the impact of the new guideline, it has been necessary to look at data on current sentence levels.

6.11 The sentencing ranges in the new guideline have been set in line with current sentencing practice. Looking at sentence levels (figure 9) it can be seen that breaches of these orders are already being sentenced at the top of the range. Over the period 2011-2015, on average 26 per cent of sentences were 2 years or above and four per cent were 4 years and above (prior to any reduction for a guilty plea). These offences

---

<sup>18</sup> The Crown Court Sentencing Survey (CCSS) collected information on the seriousness of the offence, which was categorised as Level 1 - most serious through to Level 4 - least serious. This proportion is based on the CCSS 2013 and 2014.

would fall into the highest categories in the new guideline (category A1 with a starting point of 3 years, or categories A2 and B1 with a starting point of 2 years).

6.12 Unlike the previously discussed breach offences, there is no data on which to base assumptions regarding the number of offences which are likely to fall into the top category of seriousness (A1) in the new guideline. This is because there is no existing guideline for this offence, and therefore no data was collected as part of the CCSS. In the absence of any further information it has been assumed that these offences are already being sentenced at the top of the range to reflect their seriousness, and no further uplift is anticipated.

### **Failing to comply with a notification requirement**

6.13 The existing magistrates' court guideline for failing to comply with a notification requirement focuses solely on culpability. The new guideline adopts the Sentencing Council's standard approach, assessing both culpability and harm. The two guidelines are very different in their approach and consequently it is difficult to compare them.

6.14 The new guideline is based on three levels of culpability and three levels of harm. It is designed to draw a distinction between offences where:

- there are determined attempts to avoid detection or a long period of non-compliance, which may be motivated by a desire to be unmonitored and unrestricted to commit further offences; and
- those where there is a deliberate failure to comply with the requirement; for example by an offender who moves house but does not notify the authorities.

6.15 The existing guideline extends to the Crown Court and allows for sentences up to the statutory maximum. Looking at current sentencing practice however, on average there are only around two per cent of cases over the period 2011-2015 with a sentence of 2 years or more (pre guilty plea). A review of transcripts of cases has confirmed that current guidance is not considered adequate by sentencers to address offences falling within the top end of seriousness. The new guideline is more prescriptive and as a consequence it is possible that there may be more sentences at the top end of the guideline range. However, it is not possible to assess how current cases would be distributed across the levels of harm and culpability (as there is no existing Crown Court guideline and so no data was collected as part of the CCSS) and therefore how sentence lengths may be impacted.

6.16 The guideline also includes a higher starting point at the lower end of seriousness (category A3 – the lowest level of harm but the highest level of culpability). However, findings from consultation stage research suggested that, for a case scenario at this level of seriousness, sentencing levels were similar under the existing guideline and under the new guideline. The sentencing levels for this category are therefore believed to be reflective of current sentencing practice, and therefore the guideline is not expected to impact to have a resource impact for these types of offences.

6.17 Overall, it appears that the new guideline may increase sentences for some cases. However, due to lack of data and the differences between the two guidelines it is not possible to quantify the size of the impact.

## **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. 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. 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 new guideline.

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

7.5 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).

7.6 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. Views gathered as part of the consultation and consultation stage research are also considered when developing the definitive guideline.

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.