

Sentencing Council meeting:
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Vicky Hunt
0207 0715786

1 ISSUE

1.1 As part of the Council's tenth anniversary year the Analysis and Research team undertook to estimate the cumulative impact of the Sentencing Council's guidelines. The analysis looked at all guidelines that have been evaluated to date; this covers 76 offences. Whilst all of the guidelines that had been evaluated were reviewed the team's main focus was on the impact of the Council's offence-specific guidelines on sentencing severity and subsequently on the need for prison places. The research also sought to compare the actual outcome with the expected impact for each offence.

1.2 The research found that of all of the guidelines, robbery was associated with the greatest need for additional prison places, amounting to an average of 500 places per year, by 2018. The resource assessment had indicated that we did not expect there to be an impact.

1.3 This paper asks the Council to consider whether this guideline should be revised as a result of these findings.

2 RECOMMENDATION

2.1 That the Council consider the discussion set out below.

3 CONSIDERATION

3.1 The research identified 21 offences (out of 76) where changes in sentencing severity were observed. 10 of those 21 offences related in some way to immediate custody. The potential associated change in the requirement for prison places was estimated for nine of these 10 offences.¹ Overall, it is estimated that these nine offences were associated with a need for a total of around 900 additional prison places per year, by 2018. Around three quarters of these are estimated to have arisen as a result of two offences/ guidelines:

¹ One offence (theft from a shop or stall) was excluded from the 10 offences, as it was not clear that the guideline was associated with the changes observed.

causing grievous bodily harm with intent, and robbery. All nine of the guidelines are listed below:

Robbery
Causing grievous bodily harm with intent
Non-domestic burglary
Sexual assault on a child under 13
Sexual assault
Going equipped for theft or burglary
Assault on a police constable
Importation / exportation of a class B drug
Importation / exportation of a class A drug

3.2 All other guidelines listed above are in the process of being revised or have already been revised. However, none of the revisions are solely as a result of the impact on prison places. Both the burglary and assault guidelines are currently in the older Sentencing Council format which combines the assessment of harm and culpability and leads to the identification of one of 3 categories. With this model there is no medium level of harm or culpability, only higher and lower culpability and greater/lesser harm. These old-style guidelines are a lot less nuanced and we have gradually replaced them with more complex models over the years. Whilst the revision of burglary will revise the structure and make a number of other factor changes its main aim is not to reduce seriousness for non-dwelling burglaries.

3.3 With regard to assault, the evaluation of assault revealed some concerns with specific factors within the guidelines, and there have been some changes to legislation since the existing guideline came into effect. Both of these issues are being addressed in the rewrite. For the offences where there were unintended increases in sentences under the existing guideline (for example, for GBH with intent where sentences increased considerably when only a small increase was expected), analysis suggests that the revised guidelines should address the issues causing the increases and sentences should decrease as a result.

3.4 Last month the Council were asked to consider whether changes are needed to the sexual offence guidelines listed above to address the associated increase in sentence severity. The Council decided not to take action specifically related to sentence levels as it

was felt that they were relatively minor, and justified. The Council did, however, choose to address some other issues with regard to factors that are not well understood or need clarification. These changes will be made as part of a wider project of changes to the sexual offence guidelines including a revision of the s14 Sexual Offences Act 2003 arranging or facilitating the sexual exploitation of a child guideline, and the production of a new guideline for the offence of sexual communication with a child.

3.5 The drugs guidelines have now also been revised but for reasons outside of the evaluation, mainly related to changes in offending behaviour and the creation of new offences in legislation. Indeed, drugs is only included in the list above because the original importation guideline had the desired effect of reducing seriousness for sentencing drug mules. We have not sought to undo those changes within the new importation guidelines.

3.6 For robbery there are no other reasons to revise the guidelines; there have been no changes in legislation; no significant case law that has a bearing on the guidelines, and they are in the current format. The only reason the Council would revise the guidelines would be to address the increase in sentence severity.

The Robbery Guidelines and Evaluation

3.7 The Sentencing Council's *Robbery Definitive Guideline* came into force on 1 April 2016, replacing an earlier guideline issued by the Sentencing Council's predecessor body, the Sentencing Guidelines Council. It was designed to improve consistency in sentencing and was not anticipated to change sentencing practice significantly. The guideline for adults covers all types of robbery and splits the single offence under section 8 of the Theft Act 1968 into three guidelines, with different sentencing ranges for each: [click on the link below for access to the relevant guideline]

- [Street and less sophisticated commercial;](#)
- [Dwelling;](#) and,
- [Professionally planned commercial robbery.](#)

3.8 The earlier guideline (attached as Annex A), produced by the Sentencing Guidelines Council consisted of just one guideline covering street robbery, robbery of small businesses and less sophisticated commercial robbery. Dwelling and professionally planned commercial robberies were not covered and instead sentencers were referred to relevant guidance from the Court of Appeal- a short precis of which was included.

3.9 The new guideline also had the aim of consolidating existing sentencing practice, ensuring that robberies with knives and guns should attract the toughest sentences. This was not expected to change sentencing severity in practice, because the limited data

available when the guideline was published suggested that these cases already received the toughest sentences.

3.10 However, trend data showed that sentencing severity did increase beyond the upper boundary of what would have been expected from normal fluctuations in sentencing after the guideline was introduced.² The guideline therefore appeared to have an unanticipated, inflationary effect. This indicates that we may have been mistaken in our belief that cases involving knives and guns were already getting the toughest sentence, or perhaps the case mix has changed.

3.11 The quantitative data suggested that this increase may be related to a high proportion of cases being categorised at the highest level of culpability (culpability A). Furthermore, regression analysis indicated that the new high culpability factor relating to producing a bladed article or firearm to threaten violence was associated with the greatest effect in increasing average custodial sentence length (ACSL). While this indicates that the guideline succeeded in ensuring that the robberies involving highly dangerous weapons continued to attract the toughest sentences, the inclusion of this factor in the guideline also appears to have led to an unanticipated uplift.

3.12 The introduction of 'psychological harm' as part of harm may also have played a role in the increase in sentencing severity, particularly in relation to dwelling and professionally planned commercial robberies, where psychological harm was often deemed serious.

3.13 During interviews, many judges commented positively on the guideline, considering it to be helpful, straightforward and a considerable improvement on the previous guidance. In particular, the new guideline's explicit recognition of dwelling and professionally planned commercial robbery was held to be a significant improvement. Whilst some judges felt that the guideline had increased sentence levels, those that commented to this effect were supportive of this increase. Judges were also supportive of the guideline ranges, although some felt that the guideline could still lead to sentences which were too low. Judges' comments and performance on a scenario-based sentencing exercise revealed that they used the guideline in a consistent manner and had no major difficulties with its interpretation and implementation.

3.14 One area that was not explored as part of guideline development or the evaluation is whether sentences vary according to the age, sex or ethnicity of the offender. Data tables showing sentencing outcomes and immediate custodial sentence lengths by age, sex and ethnicity will be provided to the Council on the day of the Council meeting.

² See the evaluation of the Robbery guideline:
<https://www.sentencingcouncil.org.uk/publications/item/robbery-assessment-of-guideline/>

Conclusions

3.15 The evaluation highlights that the inclusion of the high culpability factor; 'production of a bladed article, firearm or imitation firearm to threaten violence' was associated with the greatest effect in increasing average custodial sentence length (ACSL).

3.16 In preparation for this meeting the A&R team have gathered up to date data on the sentences received and the Average Custodial Sentence Lengths (ACSLs). The data can be seen at Annex B. It shows that the ACSLs continue to rise up to 2019.

3.17 As there are no other known concerns with the guideline any revision would be solely to address the increase in sentence severity and would likely involve either removing, rewording or reallocating the relevant culpability factor ('production of a bladed article, firearm or imitation firearm to threaten violence') to a lower culpability level, or the Council could chose to change the sentences within the sentence table. Changing the guidelines in any of these ways is likely to present some handling difficulties as most people would probably agree that the production of a knife and/ or firearm during a robbery makes it very serious. In addition, the guideline in its current format appears to be well liked by sentencers.

3.18 However not revising the guideline will also attract criticism from some. This guideline has had the most significant impact on sentence severity of all our guidelines to date and the impact of that guideline was not predicted. The Council have already decided to take no action in relation to the inflationary impact of other guidelines on the basis that the increase is justified.

Question

Does the Council want to revise the robbery guideline to seek to address the increases in sentence severity?

4 NEXT STEPS

4.1 Should the Council choose to take action the revision itself would not be imminent as there is already a lot of work on our schedule. It would instead be added to the list of guidelines to be produced/ rewritten. The first step in the project though would likely be further analysis, perhaps involving some transcript work to get a sense of any obvious issues or disproportionate sentencing with individual cases.

4.2 Whilst any revision of this guideline could not be started soon it is still useful to have a decision on this area now so that any questions we are asked as a result of the cumulative impacts work can be answered.

5 EQUALITIES

5.1 Data tables showing sentencing outcomes and immediate custodial sentence lengths by age, sex and ethnicity are currently being prepared and will be provided to the Council on the day of the Council meeting.

6 IMPACT AND RISKS

6.1 The Council may be criticised for failing to respond to the evidence that shows the robbery guideline to have an inflationary effect, especially as it was not one that we anticipated within our resource assessment. Robbery has had the largest impact of any of our guidelines to date. Whilst not revising the guideline may be justifiable, there have been other guidelines where similar arguments have been made, including sexual offences, and burglary. The argument could be made that the work of the Council is pushing up sentences and the Council does not respond to their own evaluations.

6.2 However, in the case of robbery the Council was clear in the development of the guidelines that offending involving the production of a knife or firearm should result in the highest level of culpability and thus result in one of the higher sentences within the sentencing table. A revision of the guideline that results in a change from this position – i.e. one that reduces the seriousness of robberies involving knives or firearms may also attract criticism.



Sentencing Guidelines Council

Robbery

Definitive Guideline

FOREWORD

In accordance with section 170(9) of the Criminal Justice Act 2003, the Sentencing Guidelines Council issues this guideline as a definitive guideline. By virtue of section 172 of the Act, every court must have regard to a relevant guideline. This guideline applies to the sentencing of offenders convicted of robbery who are sentenced on or after 1st August 2006.

Part 1 of this guideline provides starting points and sentencing ranges that are applicable to three types of robbery; street robbery or ‘mugging’, robberies of small businesses and less sophisticated commercial robberies. For other types of robbery, relevant guidance from the Court of Appeal should be applied; this is summarised in Part 2 of this guideline.

The guideline makes clear that robbery will usually merit a custodial sentence but that exceptional circumstances may justify a non-custodial penalty for an adult and, more frequently, for a young offender. In this way it is not intended to make a significant change to current practice. Over the past ten years the majority of young offenders sentenced for robbery have been given a non-custodial sentence. This contrasts with adult offenders where the majority sentenced for robbery have been given a custodial sentence.¹

The Council Guideline *New Sentences: Criminal Justice Act 2003* recognised the potentially more demanding nature of custodial sentences of 12 months or longer imposed under the new framework introduced by the Criminal Justice Act 2003. Consequently the sentencing ranges and starting points in this guideline take that principle into account.

The Council has appreciated greatly the work of the Sentencing Advisory Panel in preparing the advice on which this guideline has been based and for those who have responded so thoughtfully to the consultation of both the Panel and the Council. The advice and this guideline are available on www.sentencing-guidelines.gov.uk or from the Sentencing Guidelines Secretariat at 85 Buckingham Gate, London SW1E 6PD. A summary of the responses to the Council’s consultation also appears on the website.

Chairman of the Council
July 2006

¹ In 2004 37% of youths and 87% of adults sentenced for robbery were given custodial sentences.

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ROBBERY

A. Statutory Provision

Section 8(1) Theft Act 1968 provides:

'A person is guilty of robbery if he steals, and immediately before or at the time of doing so, and in order to do so, he uses force on any person or puts or seeks to put any person in fear of being then and there subjected to force.'

B. Forms of Robbery and Structure of the Guideline

For the purposes of this guideline, five categories of robbery have been identified and established from sentencing ranges and previous guidance. They are:

- 1. Street robbery or 'mugging'**
- 2. Robberies of small businesses**
- 3. Less sophisticated commercial robberies**
- 4. Violent personal robberies in the home**
- 5. Professionally planned commercial robberies**

The guideline is divided into two parts.

Part 1 – This part covers categories 1-3 above.

For each of the three categories, three levels of seriousness have been identified based on the extent of force used or threatened.

For each level of seriousness a sentencing range and a starting point within that range have been identified.

Adult and youth offenders are distinguished and the guideline provides for them as separate groups.

Part 2 – No guideline is provided for categories 4 and 5. Violent personal robberies are often accompanied by other serious offences which affect sentencing decisions. For professionally planned commercial robberies, existing case authority is still valid and this is summarised in Part 2.

C. Part 1

Street robbery or 'mugging'

Street robberies will usually involve some physical force (or threat) to steal modest sums, although in some cases there is significant intimidation or violence. The victim may or may not be physically injured.

Robberies of small businesses

This category covers robberies of businesses such as a small shop or post office, petrol station or public transport/taxi facility which may well lack the physical and electronic security devices available to banks or building societies and larger businesses.

Less sophisticated commercial robberies

This category covers a wide range of locations, extent of planning and degree of violence including less sophisticated bank robberies or where larger commercial establishments are the target but without detailed planning or high levels of organisation.

D. Assessing Seriousness

The offence of robbery will usually merit a custodial sentence but exceptional circumstances may justify a non-custodial penalty for an adult and, more frequently, for a young offender.

The factors to be taken into account in assessing seriousness are:

- It is the element of violence that is the most serious part of the offence of robbery, but it is not the only determinative factor.
- The relative seriousness of each offence depends on factors such as the degree of injury to the victim or the nature and duration of threats.
- The degree of force used is important in determining the seriousness of the offence but the degree of fear which was experienced by the victim is a relevant consideration.
- Use of a weapon or presence of a weapon even if not used.

(i) Levels of Seriousness

Three levels of seriousness are identified by reference to the features or type of activity that characterise an offence at each level and the degree of force or threat present. **The levels apply to all three categories of robbery but it will be very rare for robberies of small businesses or less sophisticated commercial robberies to have the features of the lowest level of seriousness.**

Level 1 – Threat and/or use of minimal force

The offence includes the threat or use of force and removal of property such as snatching from a person's grasp causing bruising/pain and discomfort.

The relative seriousness of a level 1 offence depends on:

- a) the nature and duration of any force, threat or intimidation
- b) the extent of injury (if any) to the victim
- c) the value of the property taken
- d) the number and degree of aggravating factors

Level 2 – Use of weapon to threaten and/or use of significant force

A weapon is produced and used to threaten, and/or force is used which results in injury to the victim.

The relative seriousness of a level 2 offence depends on:

- a) the nature and duration of the threat or intimidation
- b) the extent of injury (if any) to the victim
- c) the nature of the weapon used, whether it was real and, if it was a real firearm, whether it was loaded
- d) the value of the property taken
- e) the number and degree of aggravating factors

Level 3 – Use of weapon and/or significant force and serious injury caused

The victim is caused serious physical injury, such as a broken limb, stab wound or internal injury, by the use of significant force and/or use of a weapon. Offences at this level are often accompanied by the presence of additional aggravating factors such as a degree of planning or the targeting of large sums of money or valuable goods.

The relative seriousness of a level 3 offence depends on:

- a) the extent of the injury to the victim
- b) the nature of the weapon used
- c) the value of the property taken
- d) the number and degree of aggravating factors

(ii) Aggravating & Mitigating Factors

The presence of one or more aggravating features will indicate a more severe sentence within the suggested range. If the aggravating feature(s) are exceptionally serious, the case may move to the next level of seriousness.

Aggravating factors particularly relevant to robbery

(a) Degree of force or violence

- Use of a particular degree of force is more serious than the threat (which is not carried into effect) to use that same degree of force.
- Depending on the facts, however, a threat to use a high degree of force might properly be regarded as more serious than actual use of a lesser degree of force.

(b) Use of a weapon

- Possession of a weapon during the course of an offence will be an aggravating factor, even if it is not used, because it indicates planning.
- Possession of a firearm which is loaded is more serious than possession of a firearm which is unloaded.
- Whether the weapon is real or imitation is not a major factor in determining sentence because the amount of fear created in the victim is likely to be the same.
- In cases of robbery in which a firearm is carried by the offender, a separate offence of possession of a firearm may be charged. In such circumstances, sentencers should consider, where appropriate, the use of consecutive sentences which properly reflect the totality of the offending.

(c) Vulnerability of the victim

- Targeting the elderly, the young, those with disabilities and persons performing a service to the public, especially outside normal working hours, will aggravate an offence.

(d) Number involved in the offence and roles of offenders

- Group offending will aggravate an offence because the level of intimidation and fear caused to the victim is likely to be greater.
- It may also indicate planning or 'gang' activity.
- The precise role of each offender will be important. Being the ringleader in a group is an aggravating factor. However, an offender may have played a peripheral role in the offence and, rather than having planned to take part, may have become involved spontaneously through the influence of others (see Mitigating Factors below).

(e) Value of items taken

- Property value may be more important in planned/sophisticated robberies.
- The value of the property capable of being taken should be taken into account as well as the amount/value of the property actually taken.

(f) Offence committed at night/in hours of darkness

- A victim is more vulnerable while in darkness than during daylight, all other things being equal.
- The degree of fear experienced by the victim is likely to be greater if an offence is committed at night or during hours of darkness.

(g) Wearing of a disguise

- The wearing of a disguise in order to commit an offence of robbery usually indicates a degree of planning on the part of the offender.
- The deliberate selection of a particular type of disguise in advance of the offence, for example, a balaclava or a mask, will be more serious than the improvised use of items of clothing such as a hat or hood.

Mitigating factors particularly relevant to robbery:

(a) Unplanned/opportunistic

- Many street robberies are unplanned or opportunistic by their nature so the extent of the mitigation in such cases may be limited.

(b) Peripheral Involvement

- Where, as part of a group robbery, the offender has played a peripheral role in the offence this should be treated as a mitigating factor although it should be borne in mind that by participating as part of a group, even in a minor role, the offender is likely to have increased the degree of fear caused to the victim (see Aggravating Factors above).

(c) Voluntary return of property taken

- The point at which the property is returned will be important and, in general, the earlier the property is returned the greater the degree of mitigation the offender should receive.

The court will also take account of the presence or absence of other factors including:

- **Personal mitigation**
- **First offence of violence**
- **Clear evidence of remorse**
- **Ready co-operation with the police**
- **Response to previous sentences**

A list of the most important general aggravating and mitigating factors can be found in the *Guideline Overarching Principles: Seriousness*.² These factors are reproduced at **Annex A** for ease of reference.

Young Offenders

□ Young offenders may have characteristics relevant to their offending behaviour which are different from adult offenders. Also, by statute, the youth justice system has the principal aim of preventing offending by children and young persons.³ Because of this, there may be factors which are of greater significance in cases involving young offenders including:

- **Age of the offender**
- **Immaturity of the offender**
- **Group Pressure**

Sentencers should recognise the varying significance of these factors for different ages.

(iii) Reduction in Sentence for Guilty Plea

Having taking account of aggravating and mitigating factors the court should consider whether the sentence should be reduced to take account of a guilty plea and by how much, in accordance with the *Guideline: Reduction in Sentence for a Guilty Plea*.

E. Public Protection Sentences – Dangerous Offenders

Robbery is a serious offence for the purposes of section 225 of the Criminal Justice Act 2003 and sentencers should consider whether a life sentence or sentence for public protection should be imposed.

F. Ancillary Orders

In **all** cases, courts should consider making the following orders:

- **Restitution Order**⁴ – requiring the return of property
- **Compensation Order**⁵ – for injury, loss or damage suffered.

Where a non-custodial sentence is imposed, courts may also consider making:

- **Anti-social behaviour order**⁶ – to protect the public from behaviour causing harassment, alarm or distress. This order may be particularly appropriate where the offence of robbery forms part of a pattern of behaviour but such an order may be unnecessary if it will simply prohibit what is already criminal conduct. It may be used to prevent some offenders associating with other offenders with whom offences of robbery have been committed.

² Paragraphs 1.22-1.25

³ Crime and Disorder Act 1998, s.37

⁴ Powers of Criminal Courts (Sentencing) Act 2000, ss.148-149

⁵ *ibid.* s.130

⁶ Crime & Disorder Act 1998, s.1 as amended

G. Factors to take into consideration – Adult Offenders

1. Robbery is a serious offence for the purposes of section 225 of the Criminal Justice Act 2003 and sentencers should consider whether a life sentence or sentence for public protection should be imposed. **The following guidelines apply to offenders who have not been assessed as dangerous.**
2. The sentencing ranges and presumptive starting points apply to all three categories of robbery detailed above:
 - **Street robbery or ‘mugging’**
 - **Robberies of small businesses**
 - **Less sophisticated commercial robberies**
3. **The ‘starting points’ are based upon a first time offender who pleaded not guilty.**
4. A reduction to the appropriate sentence, taking account of seriousness and aggravating and mitigating factors, will need to be made if an offender has pleaded guilty. The effect of applying the reduction may be that the sentence imposed for an offence at one level of seriousness may fall within the range suggested for the next lowest level of seriousness.
5. The relative seriousness of each offence will be determined by the following factors:
 - **Degree of force and/or nature and duration of threats**
 - **Degree of injury to the victim**
 - **Degree of fear experienced by the victim**
 - **Value of property taken**
6. Use of a particular degree of force is more serious than the threat (which is not carried into effect) to use that same degree of force. Depending on the facts, however, a threat to use a high degree of force might properly be regarded as more serious than actual use of a lesser degree of force.
7. If a weapon is involved in the use or threat of force, the offence will be more serious. Possession of a weapon during the course of an offence will be an aggravating factor, even if it is not used, because it indicates planning. If the offence involves a real firearm it will be more serious if that firearm is loaded. Whether the weapon is real or imitation is not a major factor in determining sentence because the amount of fear created in the victim is likely to be the same.
8. The value of the property capable of being taken as well as the actual amount taken is important.
9. The presence of one or more aggravating features will indicate a more severe sentence within the suggested range and, if the aggravating feature(s) are exceptionally serious, the case will move up to the next level.
10. In all cases, courts should consider making a restitution order and/or a compensation order. Where a non-custodial sentence is imposed, the court may also consider making an anti-social behaviour order.
11. Passing the custody threshold does not mean that a custodial sentence should be deemed inevitable.⁷

⁷ Guideline *Overarching Principles: Seriousness*, Para 1.32

**Street robbery or ‘mugging’
Robberies of small businesses
Less sophisticated commercial robberies**

**Robbery is a serious offence for the purposes of sections 225 and 227
Criminal Justice Act 2003**

Maximum Penalty: **Life imprisonment**

ADULT OFFENDERS

Type/nature of activity	Starting point	Sentencing Range
The offence includes the threat or use of minimal force and removal of property.	12 months custody	Up to 3 years custody
A weapon is produced and used to threaten, and/or force is used which results in injury to the victim.	4 years custody	2-7 years custody
The victim is caused serious physical injury by the use of significant force and/or use of a weapon.	8 years custody	7-12 years custody

Additional aggravating factors	Additional mitigating factors
<ol style="list-style-type: none"> 1. More than one offender involved. 2. Being the ringleader of a group of offenders. 3. Restraint, detention or additional degradation, of the victim. 4. Offence was pre-planned. 5. Wearing a disguise. 6. Offence committed at night. 7. Vulnerable victim targeted. 8. Targeting of large sums of money or valuable goods. 9. Possession of a weapon that was not used. 	<ol style="list-style-type: none"> 1. Unplanned/opportunistic. 2. Peripheral involvement. 3. Voluntary return of property taken. 4. Clear evidence of remorse. 5. Ready co-operation with the police.

H. Factors to take into consideration – Young Offenders

1. A youth court cannot impose a custodial sentence on an offender aged 10 or 11. If the offender is aged 12, 13 or 14, a detention and training order can only be imposed by a youth court in the case of persistent young offenders. In the Crown Court, however, long-term detention in accordance with the Powers of Criminal Courts (Sentencing) Act 2000 can be ordered on any young offender without the requirement of persistence. The Crown Court may also impose an extended sentence, detention for public protection or detention for life where the young offender meets the criteria for being a “dangerous offender.” **The following guidelines apply to offenders who have not been assessed as dangerous.**

2. If a youth court is considering sending a case to the Crown Court, the court must be of the view that it is such a serious case that detention above two years is required, or that the appropriate sentence is a custodial sentence approaching the two year limit which is normally applicable to older offenders.⁸

3. The sentencing ranges and presumptive starting points apply to all three categories of robbery detailed above:

- **Street robbery or ‘mugging’**
- **Robberies of small businesses**
- **Less sophisticated commercial robberies**

4. **The ‘starting points’ are based upon a first-time offender, aged 17 years old, who pleaded not guilty. For younger offenders sentencers should consider whether a lower starting point is justified in recognition of the offender’s age or immaturity.**

5. Young offenders may have characteristics relevant to their offending behaviour which are different from adult offenders. Also, by statute, the youth justice system has the principal aim of preventing offending by children and young persons.⁹ Because of this, there may be factors which are of greater significance in cases involving young offenders. Sentencers should recognise the varying significance of such factors for different ages.

6. A reduction to the appropriate sentence, taking account of seriousness, and aggravating and mitigating factors, will need to be made if an offender has pleaded guilty. The effect of applying the reduction may be that the sentence imposed for an offence at one level of seriousness may fall within the range suggested for the next lowest level of seriousness.

7. The relative seriousness of each offence will be determined by the following factors:

- **Degree of force and/or nature and duration of threats**
- **Degree of injury to the victim**
- **Degree of fear experienced by the victim**
- **Value of property taken**

⁸ *W v Southampton Youth Court, K v Wirral Borough Magistrates’ Court* [2003] 1 Cr App R (S) 87

⁹ Crime and Disorder Act 1998, s.37

8. Use of a particular degree of force is more serious than the threat (which is not carried into effect) to use that same degree of force. Depending on the facts, however, a threat to use a high degree of force might properly be regarded as more serious than actual use of a lesser degree of force.
9. If a weapon is involved in the use or threat of force, the offence will be more serious. Possession of a weapon during the course of an offence will be an aggravating factor, even if it is not used, because it indicates planning. If the offence involves a real firearm it will be more serious if that firearm is loaded. Whether the weapon is real or imitation is not a major factor in determining sentence because the amount of fear created in the victim is likely to be the same.
10. The value of the property capable of being taken as well as the actual amount taken is important.
11. The presence of one or more aggravating features will indicate a more severe sentence within the suggested range and, if the aggravating feature(s) are exceptionally serious, the case will move up to the next level.
12. In all cases, courts should consider making a restitution order and/or a compensation order. Where a non-custodial sentence is imposed, the court may also consider making an anti-social behaviour order.
13. Courts are required by section 44(1) of the Children and Young Persons Act 1933 to have regard to the welfare of the child, and under section 37 of the Crime and Disorder Act 1998 to have regard to the overall aim of the youth justice system of preventing re-offending.
14. Passing the custody threshold does not mean that a custodial sentence should be deemed inevitable.¹⁰
15. Where there is evidence that the offence has been committed to fund a drug habit and that treatment for this could help tackle the offender's offending behaviour, sentencers should consider a drug treatment requirement as part of a supervision order or action plan order.

¹⁰ Guideline *Overarching Principles: Seriousness*, Para 1.32

**Street robbery or ‘mugging’
Robberies of small businesses
Less sophisticated commercial robberies**

**Robbery is a serious offence for the purposes of sections 226 and 228
Criminal Justice Act 2003**

Maximum Penalty: **Life imprisonment**

YOUNG OFFENDERS*

Type/nature of activity	Starting point	Sentencing Range
The offence includes the threat or use of minimal force and removal of property.	Community Order	Community Order – 12 months detention and training order
A weapon is produced and used to threaten, and/or force is used which results in injury to the victim.	3 years detention	1-6 years detention
The victim is caused serious physical injury by the use of significant force and/or use of a weapon.	7 years detention	6-10 years detention

Additional aggravating factors	Additional mitigating factors
<ol style="list-style-type: none"> 1. More than one offender involved. 2. Being the ringleader of a group of offenders. 3. Restraint, detention or additional degradation, of the victim. 4. Offence was pre-planned. 5. Wearing a disguise. 6. Offence committed at night. 7. Vulnerable victim targeted. 8. Targeting of large sums of money or valuable goods. 9. Possession of a weapon that was not used. 	<ol style="list-style-type: none"> 1. Unplanned/opportunistic. 2. Peripheral involvement 3. Voluntary return of property taken. 4. Clear evidence of remorse. 5. Ready co-operation with the police. 6. Age of the offender. 7. Immaturity of the offender. 8. Peer group pressure.

* The ‘starting points’ are based upon a first-time offender aged 17 years old who pleaded not guilty. For younger offenders, sentencers should consider whether a lower starting point is justified in recognition of the offender’s age or immaturity.

I. Part 2

Relevant guidance from the Court of Appeal (which is summarised below for ease of reference) should apply to cases falling within the final two categories of robbery.

Violent personal robberies in the home

The sentencing range for robbery in the home involving physical violence is 13-16 years for a first time offender pleading not guilty. In this type of case, the starting point reflects the high level of violence, although it is clear that longer terms will be appropriate where extreme violence is used.¹¹

This category overlaps with some cases of aggravated burglary (an offence which also carries a maximum of life imprisonment) where comparable sentences are passed.

Consideration will need to be given as to whether the offender is a “dangerous offender” for the purposes of the Criminal Justice Act 2003.

Professionally planned commercial robberies

The leading Court of Appeal decision on sentencing for robbery is the 1975 case of *Turner*.¹² This focuses on serious commercial robberies at the upper end of the sentencing range but just below the top level – planned professional robberies of banks and security vehicles, involving firearms and high value theft, but without the additional elements that characterise the most serious cases. The Court of Appeal said it had ‘come to the conclusion that the normal sentence for anyone taking part in a bank robbery or in the hold-up of a security or a Post Office van should be 15 years if firearms were carried and no serious injury done.’

The Court also said that 18 years should be about the maximum for crimes which are not ‘wholly abnormal’ (such as the Great Train Robbery).¹³

In cases involving the most serious commercial robberies the Court has imposed 20-30 years (15-20 years after a plea of guilty).

Consideration will need to be given as to whether the offender is a “dangerous offender” for the purposes of the Criminal Justice Act 2003.

11 *O’Driscoll* (1986) 8 Cr App R (S) 121

12 (1975) 61 Cr App R 67

13 *Wilson and others* (1964) 48 Cr App R 329

Extracts from Guideline Overarching Principles: Seriousness

This is a general list which is included here for ease of reference. Not every factor will apply to an offence of robbery.

(i) Aggravating factors

1.22 Factors indicating higher culpability:

- Offence committed whilst on bail for other offences
- Failure to respond to previous sentences
- Offence was racially or religiously aggravated
- Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)
- Offence motivated by, or demonstrating, hostility based on the victim's disability (or presumed disability)
- Previous conviction(s), particularly where a pattern of repeat offending is disclosed
- Planning of an offence
- An intention to commit more serious harm than actually resulted from the offence
- Offenders operating in groups or gangs
- 'Professional' offending
- Commission of the offence for financial gain (where this is not inherent in the offence itself)
- High level of profit from the offence
- An attempt to conceal or dispose of evidence
- Failure to respond to warnings or concerns expressed by others about the offender's behaviour
- Offence committed whilst on licence
- Offence motivated by hostility towards a minority group, or a member or members of it
- Deliberate targeting of vulnerable victim(s)

- Commission of an offence while under the influence of alcohol or drugs
- Use of a weapon to frighten or injure victim
- Deliberate and gratuitous violence or damage to property, over and above what is needed to carry out the offence
- Abuse of power
- Abuse of a position of trust

1.23 Factors indicating a more than usually serious degree of harm:

- Multiple victims
- An especially serious physical or psychological effect on the victim, even if unintended
- A sustained assault or repeated assaults on the same victim
- Victim is particularly vulnerable
- Location of the offence (for example, in an isolated place)
- Offence is committed against those working in the public sector or providing a service to the public
- Presence of others e.g. relatives, especially children or partner of the victim
- Additional degradation of the victim (e.g. taking photographs of a victim as part of a sexual offence)
- In property offences, high value (including sentimental value) of property to the victim, or substantial consequential loss (e.g. where the theft of equipment causes serious disruption to a victim's life or business).

(ii) Mitigating factors

1.24 Some factors may indicate that an offender's culpability is **unusually** low, or that the harm caused by an offence is less than usually serious.

1.25 Factors indicating significantly lower culpability:

- A greater degree of provocation than normally expected
- Mental illness or disability
- Youth or age, where it affects the responsibility of the individual defendant
- The fact that the offender played only a minor role in the offence

(iii) Personal mitigation

1.26 Section 166(1) Criminal Justice Act 2003 makes provision for a sentencer to take account of any matters that 'in the opinion of the court, are relevant in mitigation of sentence'.

1.27 When the court has formed an initial assessment of the seriousness of the offence, then it should consider any offender mitigation. The issue of remorse should be taken into account at this point along with other mitigating features such as admissions to the police in interview.

Extracted from Guideline, Overarching Principles: Seriousness, Sentencing Guidelines Council, December 2004

ANNEX B

Number and proportion of adult offenders sentenced in the Crown Court for robbery, by sentencing outcome, 2009 to 2019

Volumes	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Discharge	9	4	4	3	0	4	3	2	1	2	1
Fine	4	2	0	4	7	1	3	0	1	0	0
Community sentence	246	297	253	202	111	79	48	42	25	50	55
Suspended sentence	463	489	532	547	492	429	362	255	214	184	177
Immediate custody	4,139	4,119	4,593	4,209	3,714	3,232	2,862	2,542	2,459	2,199	2,326
Otherwise dealt with	44	41	45	46	35	73	79	77	71	68	74
Total	4,905	4,952	5,427	5,011	4,359	3,818	3,357	2,918	2,771	2,503	2,633

Proportions	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Discharge	<0.5%	<0.5%	<0.5%	<0.5%	0%	<0.5%	<0.5%	<0.5%	<0.5%	<0.5%	<0.5%
Fine	<0.5%	<0.5%	0%	<0.5%	<0.5%	<0.5%	<0.5%	0%	<0.5%	0%	0%
Community sentence	5%	6%	5%	4%	3%	2%	1%	1%	1%	2%	2%
Suspended sentence	9%	10%	10%	11%	11%	11%	11%	9%	8%	7%	7%
Immediate custody	84%	83%	85%	84%	85%	85%	85%	87%	89%	88%	88%
Otherwise dealt with	1%	1%	1%	1%	1%	2%	2%	3%	3%	3%	3%

Average custodial sentence lengths (ACSL) received by adult offenders sentenced for robbery, 2009 to 2019

ACSL (years)	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Mean	3.1	3.2	3.3	3.3	3.6	3.6	3.8	4.0	4.2	4.4	4.8
Median	2.7	2.7	2.8	2.7	3.0	3.0	3.0	3.3	3.5	3.8	4.0
Proportion of indeterminate sentences	5%	4%	3%	3%	<0.5%	1%	<0.5%	<0.5%	<0.5%	<0.5%	<0.5%

ANNEX B

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