

Sentencing Council meeting:
Paper number:

Lead Council member:
Lead official:

12 May 2023
**SC(00)MAY05 - Perverting the Course of
Justice and Witness intimidation**
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1 ISSUE

1.1 This is the final meeting to sign off the guidelines ahead of publication of the definitive perverting the course of justice (PTCJ) and revised witness intimidation guidelines. This meeting will focus on the final resource assessment. On the current timetable the guidelines will be published in the summer and come into force in the autumn.

2 RECOMMENDATION

2.1 At today's meeting the Council is asked:

- To consider and agree the final resource assessment
- To sign off the guidelines for definitive publication

3 CONSIDERATION

3.1 To summarise, a consultation was held on the draft guidelines during Spring 2022. The proposed draft guidelines were generally well received, so changes agreed by the Council post consultation have been reasonably modest. The finalised guidelines are attached at **Annexes A and B**. The changes that have been made are:

Witness Intimidation -Annex A

High culpability

- First factor amended to read 'actual or threat of violence' - deleting the words 'to witnesses and/or their families'
- Deleting the factor 'deliberately seeking out witnesses'
- 'Breach of bail conditions' factor reworded to 'breach of specific bail conditions and/or protection notice imposed to protect a witness'

- New factor of ‘breach of court order (see step five on totality when sentencing more than one offence)’

Low culpability

- First factor reworded to ‘contact with witness unplanned and limited in scope and duration’

Harm - category one

- First factor - the words ‘and/or workplace’ added so it reads ‘contact made at or in vicinity of victim’s home and/or workplace’
- Second factor - the words ‘and/or impact’ added so it reads ‘serious distress and/or impact caused to victim’

Harm - category two

- First factor - the words ‘and/or impact’ added so it now reads ‘some distress and/or impact caused to the victim’

Harm – category three

- First factor - the words ‘and/or impact’ added so it now reads ‘limited distress and/or impact caused to the victim’
- New factor added of ‘limited impact on administration of justice’

Aggravating factors

New factors added:

- ‘Offence committed in a domestic context’
- ‘Offence committed in custody’
- ‘Child present and/or child caused serious distress’
- ‘Use of social media’ factor - deleted

Sentence levels

- 3C - increase from Low Level Community Order - 6 months custody with a starting point of Medium Low Community Order – to Medium Level Community Order to 6 months custody with a starting point of High Level Community Order

PTCJ -Annex B

High Culpability

- New factor added of 'breach of trust or abuse of position or office'

Low culpability

- New wording of 'or as a result of domestic abuse' added to the fourth factor so it reads 'involved through coercion, intimidation or exploitation or as a result of domestic abuse'

Harm- category three

- First factor reworded to 'limited distress caused to an innocent party'
- New factors added of 'limited impact on the administration of justice' and 'limited delay caused to the course of justice'

Aggravating factors

- New factor of 'offence committed in a domestic context' added

Sentence levels

- In 3C – increase from a Medium Level Community order to 6 months custody with a starting point of a High Level Community order to a High Level Community Order to 9 months custody with a starting point of 6 months custody

Question one: Are Council content to sign off the definitive guidelines for publication?

Resource Assessment

3.2 It is difficult to estimate the impact of the definitive guidelines for these offences. However, it is anticipated that the guidelines will improve consistency of sentencing, and not lead to any notable changes in sentencing severity. The full definitive resource assessment for these offences can be found at **Annex C**.

3.3 For perverting the course of justice, estimating the impact is made more difficult by the varied nature of the underlying offences and the somewhat limited information in the transcripts analysed, therefore, it is important to note that these findings should be treated as indicative only. However, using the information available we anticipate that sentences using the guideline will remain broadly in line with the outcomes given by sentencers prior to the guideline.

3.4 Given that all of the starting points for perverting the course of justice are custodial, it is anticipated that at least some offenders currently receiving a fine or community order would receive a custodial sentence under the new guideline. However, this only affects a small proportion of offenders (4 per cent received a fine or community order in 2021 which

equates to around 20 offenders). In addition, eight of the nine categories in the sentence table for this offence have a starting point which is eligible for suspension. Thus, any impact on prison and probation resources is expected to be limited. The transcript analysis also showed some changes in the lengths of custodial sentences expected to be given, with some increases and decreases in sentences under the new guideline compared with the original sentences imposed. However, these were offset by each other and so overall, the average custodial sentence length is expected to remain broadly similar under the guideline. Therefore, we anticipate that there will be limited impact on prison and probation resources.

3.5 For witness intimidation, the transcripts analysed did not always include all of the information required to accurately assess the level of culpability and harm. Additionally, very few transcripts were analysed for those sentenced to fines or community orders (around a third of cases are sentenced at the magistrates' courts). Therefore, there is insufficient evidence to determine if sentence outcomes given under the new guideline would change for offenders currently receiving non-custodial sentences. However, these represent a small proportion of offenders (around 10 per cent received fines or community orders in 2021- which equates to around 20 offenders). Thus, it is expected that these cases would have a limited impact on prison and probation resources.

3.6 For custodial sentences, based on the information provided, it is also anticipated that sentencing levels for witness intimidation will remain relatively stable under the new guideline. There were some changes (increases and decreases) in the lengths of custodial sentences given in the transcript analysis, but overall, these were offset by each other. Thus, it is anticipated that the average custodial sentence length will remain broadly stable. As such, it is anticipated that any impact the guideline has on prison or probation resources would be limited.

3.7 During the consultation stage, research was conducted with sentencers to understand how the guidelines will be applied in practice. Sentencers taking part noted that the guidelines helped them to determine the category of culpability and harm to apply for the scenarios they were presented with. These were generally applied consistently.

Question two: Does the Council have any questions or concerns on the resource assessment?

4 IMPACT AND RISKS

5.1 It is thought that publication of these guidelines will be welcomed- there is currently no guideline for PTCJ and only limited guidance for witness intimidation in the MCSG.

Witness Intimidation

Criminal Justice and Public Order Act 1994, s.51(1) and s.51(2)

Triable either way

Maximum: 5 years' custody

Offence range: Community Order- 4 years' custody

STEP ONE

Determining the offence category

The court should determine the offence category with reference only to the factors in the table below. In order to determine the category the court should assess **culpability** and **harm**.

The level of **culpability** is determined by weighing up all the factors of the case. **Where there are characteristics present which fall under different levels of culpability the court should balance these characteristics to reach a fair assessment of the offender's culpability.**

CULPABILITY	
Demonstrated by one or more of the following:	
A- High Culpability	<ul style="list-style-type: none">• Actual or threat of violence• Breach of specific bail conditions and/or protection notice imposed to protect a witness• Breach of court order (see step five on totality when sentencing more than one offence)• Conduct over a sustained period of time• Sophisticated and/or planned nature of conduct
B- Medium culpability	<ul style="list-style-type: none">• Non-violent conduct amounting to a threat• Other cases that fall between categories A and C because:<ul style="list-style-type: none">○ Factors are present in A and C which balance each other out and/or○ The offender's culpability falls between the factors described in A and C
C- Lower culpability	<ul style="list-style-type: none">• Contact with witness unplanned and limited in scope and duration• Involved through coercion, intimidation or exploitation• Offender's responsibility substantially reduced by mental disorder or learning disability
HARM	
The level of harm is assessed by weighing up all the factors in the case.	
Category 1	<ul style="list-style-type: none">• Contact made at or in vicinity of victim's home and/or workplace• Serious distress and/or impact caused to victim• Serious impact on administration of justice
Category 2	<ul style="list-style-type: none">• Some distress and/or impact caused to the victim• Some impact on administration of justice
Category 3	<ul style="list-style-type: none">• Limited distress and/or impact caused to the victim• Limited impact on administration of justice

STEP TWO

Starting point and category range

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions

Harm	Culpability		
	A	B	C
Category 1	Starting Point 2 years' custody Category Range 1 -4 years' custody	Starting Point 1 years' custody Category Range 9 months-2 years' custody	Starting Point 9 months' custody Category Range 6 months - 1 years' custody
Category 2	Starting Point 1 years' custody Category Range 9 months -2 years' custody	Starting Point 9 months' custody Category Range 6 months - 1 years' custody	Starting Point 6 months custody Category Range High level community order - 9 months' custody
Category 3	Starting Point 9 months' custody Category Range 6 months -1 years' custody	Starting Point 6 months custody Category Range High level community order – 9 months' custody	Starting Point High level community order Category Range Medium level community order – 6 months custody

Below is a **non-exhaustive** list of additional elements providing the context of the offence and factors relating to the offender. Identify whether a combination of these or other relevant factors should result in any upward or downward adjustment from the sentence arrived at so far.

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- Offence committed whilst on bail

Other aggravating factors:

- Child present and/or child caused serious distress
- Offence committed in custody
- Offence committed in a domestic context

- Offender involves others in the conduct
- Vulnerable victim
- Commission of offence whilst under the influence of alcohol or drugs
- Evidence concealed/destroyed
- Offence committed on licence or post sentence supervision or while subject to court order(s)

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Remorse
- Good character and/or exemplary conduct
- The offender was in a lesser or subordinate role if acting with others/performed limited role under direction
- Determination, and/or demonstration of steps taken to address addiction or offending behaviour.
- Physical disability or serious medical conditions requiring urgent, intensive or long-term treatment
- Mental disorder, learning disability (where not taken into account at step one)
- Age and/or lack of maturity
- Sole or primary carer for dependent relatives

STEP THREE

Consider any factors which indicate a reduction for assistance to the prosecution

The court should take into account [section 74 of the Sentencing Code](#) (reduction in sentence for assistance to prosecution) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR

Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with [section 73 of the Sentencing Code](#) and the [Reduction in Sentence for a Guilty Plea](#) guideline.

STEP FIVE

Totality principle

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the [Totality](#) guideline.

STEP SIX

Compensation and ancillary orders

In all cases, the court should consider whether to make compensation and/or other ancillary orders. Where the offence has resulted in personal injury, loss or damage the court must give reasons if it decides not to order compensation ([Sentencing Code, s.55](#)).

- [Ancillary orders – Magistrates’ Court](#)
- [Ancillary orders – Crown Court Compendium](#)

STEP SEVEN**Reasons**

[Section 52 of the Sentencing Code](#) imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP EIGHT**Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003 and [section 52 of the Sentencing Code](#)

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Perverting the Course of Justice

Common law

Triable only on indictment

Maximum: Life imprisonment

Offence range: Community order – 7 years' custody

STEP ONE

Determining the offence category

The court should determine the offence category with reference only to the factors in the table below. In order to determine the category the court should assess **culpability** and **harm**.

The level of **culpability** is determined by weighing up all the factors of the case. **Where there are characteristics present which fall under different levels of culpability the court should balance these characteristics to reach a fair assessment of the offender's culpability.**

CULPABILITY	
Demonstrated by one or more of the following:	
A- High Culpability	<ul style="list-style-type: none">• Conduct over a sustained period of time• Sophisticated and/or planned nature of conduct• Underlying offence very serious• Breach of trust or abuse of position or office
B- Medium culpability	<ul style="list-style-type: none">• Other cases that fall between categories A and C because:<ul style="list-style-type: none">○ Factors are present in A and C which balance each other out and/or○ The offender's culpability falls between the factors described in A and C
C- Lower culpability	<ul style="list-style-type: none">• Unplanned and/or limited in scope and duration• Unsophisticated nature of conduct• Underlying offence was not serious• Involved through coercion, intimidation or exploitation or as a result of domestic abuse• Offender's responsibility substantially reduced by mental disorder or learning disability
HARM	
The level of harm is assessed by weighing up all the factors in the case.	
Category 1	<ul style="list-style-type: none">• Serious consequences for an innocent party as a result of the offence (for example time spent in custody/arrest)• Serious distress caused to an innocent party (for example loss of reputation)• Serious impact on administration of justice• Substantial delay caused to the course of justice
Category 2	<ul style="list-style-type: none">• Suspicion cast upon an innocent party as a result of the offence• Some distress caused to an innocent party• Some impact on administration of justice• Some delay caused to the course of justice
Category 3	<ul style="list-style-type: none">• Limited distress caused to an innocent party• Limited impact on the administration of justice• Limited delay caused to the course of justice

STEP TWO

Starting point and category range

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions

Harm	Culpability		
	A	B	C
Category 1	Starting Point 4 years' custody Category Range 2 - 7 years' custody	Starting Point 2 years' custody Category Range 1 -4 years' custody	Starting Point 1 years' custody Category Range 9 months - 2 years' custody
Category 2	Starting Point 2 years' custody Category Range 1 -4 years' custody	Starting Point 1 years' custody Category Range 9 months - 2 years' custody	Starting Point 9 months' custody Category Range 6 months - 1 years' custody
Category 3	Starting Point 1 years' custody Category Range 9 months - 2 years' custody	Starting Point 9 months' custody Category Range 6 months - 1 years' custody	Starting Point 6 months' custody Category Range High level community order – 9 months custody

Below is a **non-exhaustive** list of additional elements providing the context of the offence and factors relating to the offender. Identify whether a combination of these or other relevant factors should result in any upward or downward adjustment from the sentence arrived at so far.

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- No previous convictions **or** no relevant/recent convictions
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- Good character and/or exemplary conduct
- The offender was in a lesser or subordinate role if acting with others/performed limited role under direction
- Determination, and/or demonstration of steps taken to address addiction or offending behaviour
- Physical disability or serious medical conditions requiring urgent, intensive or long-term treatment
- Mental disorder, learning disability (where not taken into account at step one)
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In all cases, the court should consider whether to make compensation and/or other ancillary orders. Where the offence has resulted in personal injury, loss or damage the court must give reasons if it decides not to order compensation ([Sentencing Code, s.55](#)).

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[Section 52 of the Sentencing Code](#) imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP EIGHT**Consideration for time spent on bail**

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Final Resource Assessment

Perverting the Course of Justice and Witness Intimidation offences

Introduction

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.

Rationale and objectives for new guideline

No current guideline exists for offences relating to perverting the course of justice, a common law offence. The Council has produced a new sentencing guideline for this offence, for use in all courts in England and Wales.

In May 2008, the Sentencing Guidelines Council (SGC) published the Magistrates' Court Sentencing Guidelines (MCSG), covering most of the offences regularly going before magistrates' courts. This included the offence of witness intimidation under section 51(1) and section 51(2) of the Criminal Justice and Public Order Act 1994. The MCSG only apply to sentences passed at magistrates' courts, and so there are no existing guidelines for this offence for use in the Crown Court. The Council has produced a new sentencing guideline for this offence, for use at all courts.

The Council's aim in developing the new and revised guidelines is to provide sentencers with a clear approach to sentencing these offences that will ensure that sentences are proportionate to the offence committed and in relation to other offences. It should also promote a consistent approach to sentencing.

Scope

As stipulated by [section 127 of the Coroners and Justice Act 2009](#), this assessment considers the resource impact of the guideline on the prison service, probation service and youth justice services. Any resource impacts which may fall elsewhere are therefore not included in this assessment.

This resource assessment covers the new and revised guidelines for the following offences:

- perverting the course of justice contrary to Common Law

- intimidating a witness contrary to sections 51(1) and 51(2) of the Criminal Justice and Public Order Act 1994

These guidelines apply to sentencing adults only; they will not directly apply to the sentencing of children and young people.

Current sentencing practice

To ensure that the objectives of the guidelines are realised, and to understand better the potential resource impacts of the guidelines, the Council has carried out analytical and research work in support of them.

The intention is that the new and revised guidelines will encourage consistency of sentencing, especially where no guideline currently exists, and will better reflect current case law.

Knowledge of recent sentencing was required to understand how the new guideline may impact sentences. Sources of evidence have included the analysis of transcripts of Crown Court judges' sentencing remarks for offenders sentenced for perverting the course of justice and witness intimidation. A total of 27 transcripts of Crown Court sentencing remarks for perverting the course of justice from 2015, 2016 and 2017 were analysed. For witness intimidation, a total of 18 transcripts from 2015, 2017 and 2020 were analysed. In addition, sentencing data from the Court Proceedings Database have been used. For more information on this data source please see the Further information section at the end of this document. Knowledge of the sentences and factors used in previous cases, in conjunction with Council members' experience of sentencing, has helped to inform the development of the guidelines.

During the consultation stage, research was conducted with sentencers, to explore whether the draft guidelines would work as anticipated. This research also provided some further understanding of the potential impact of the guidelines on sentencing practice, and the subsequent effect on prison and probation resources.

Detailed sentencing statistics for the offences covered by the guidelines have been published on the [Sentencing Council: Statistical bulletins webpage](#).

Perverting the course of justice

In 2021, around 570 offenders were sentenced for perverting the course of justice and all of these were sentenced at the Crown Court. Around half of these offenders (51 per cent) were sentenced to immediate custody and a further 43 per cent were given a suspended sentence order. Community orders accounted for 4 per cent of offenders sentenced, less than 0.5 per cent were given a fine, 1 per cent were given a discharge and 2 per cent were recorded as otherwise dealt with.

Perverting the course of justice is a Common Law offence and, as such, the maximum sentence is life imprisonment. For those receiving immediate custody in 2021, the (mean) average custodial sentence length (ACSL) was 1 year.

Witness intimidation

In 2021, around 210 offenders were sentenced for intimidating a witness, with around two thirds (66 per cent) sentenced at the Crown Court and the rest (34 per cent) sentenced at the magistrates' courts. Most offenders (57 per cent) were sentenced to immediate custody. A further 29 per cent received a suspended sentence, 9 per cent received a community order, 1 per cent received a fine and 4 per cent were recorded as otherwise dealt with.

The statutory maximum sentence for witness intimidation is 5 years' custody and in 2021, the ACSL for this offence was 10 months.

Key assumptions

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, some 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 substantial degree of uncertainty.

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. In addition, for low volume offences, there are limited data available. The assumptions therefore must be based on careful analysis of how current sentencing practice corresponds to the guideline ranges presented in the proposed new guideline, and an assessment of the effects of changes to the wording of the guideline where a previous guideline existed.

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

In developing sentence levels for the new guidelines, existing guidance and data on current sentence levels has been considered. While data exists on the number of offenders and the sentences imposed, assumptions have been made about how current cases would be categorised across the levels of culpability and harm proposed in the guidelines using relevant transcripts, due to a lack of data available regarding the seriousness of current cases. As a consequence, it is difficult to ascertain how sentence levels may change under the guideline.

It therefore remains difficult to estimate with any precision the impact the guidelines may have on prison and probation resources. To support the development of the new guidelines, and to mitigate the risk of the changes having an unintended impact, research was undertaken with sentencers during the consultation period, utilising different scenarios. Along with consultation responses, this provided more

information on which to base the final resource assessment accompanying the definitive guidelines.

Resource impacts

This section should be read in conjunction with the guidelines available on the [Sentencing Council website](#).

Overall impacts

The expected impact of each guideline is provided in detail below.

For both perverting the course of justice and witness intimidation offences, it is difficult to estimate the impact of the guidelines. However, it is anticipated that the new guidelines will improve consistency of sentencing for these offences, and not lead to any notable changes in sentencing severity.

Perverting the course of justice

There is currently no guideline for perverting the course of justice and the proposed guideline has three levels of culpability and three levels of harm. This leads to nine offence categories with sentences ranging from a community order to seven years' custody. The Council's intention with the new guideline is not to change sentencing practice and, as such, sentencing ranges have been set with current sentencing practice in mind.

Perverting the course of justice is an indictable only offence and as such all offenders are sentenced at the Crown Court. Analysis of a sample of Crown Court judges' sentencing remarks has been undertaken to understand the possible effects of the guideline on sentencing practice.

These types of cases vary as there are a number of different underlying offences for which an offender could be sentenced for perverting the course of justice. The sample of transcripts analysed covers a range of these underlying offences and as such offers some insight into the circumstances of the cases and the reasoning behind the sentences given. However, it is not possible to obtain information on all relevant underlying offences and for those cases for which we do have transcripts, they do not always provide all the information needed to accurately assess the seriousness and nature of the offence, which can often vary from case to case. Therefore, findings presented in this resource assessment should be treated as indicative only.

Case law suggests that offences of perverting the course of justice often warrant a custodial sentence but that these do not always need to be long custodial sentences (Source: Abdulwahab [2018] EWCA Crim 1399). Accordingly, all starting points in the guideline are custodial and only one sentence range in the guideline has a non-custodial sentence outcome (category C3). This is supported by the sample of transcripts analysed, which indicated that very few cases would fall into category C3 and is also in line with current sentencing practice (fewer than 10 per cent of offenders received a non-custodial sentence in 2021).

The transcript analysis suggested that the sentence types would remain similar under the new guideline; for example, offenders currently receiving a suspended sentence order would continue to do so, as would offenders currently receiving a sentence of immediate custody.

Given that all of the starting points for this offence are custodial, it is anticipated that at least some offenders currently receiving a fine or community order would receive a custodial sentence under the new guideline. However, this only affects a small proportion of offenders (around 4 per cent received a fine or community order in 2021). In addition, sentencers are able to suspend sentences between 14 days and 2 years, and eight of the nine categories in the sentence table for this offence have a starting point which is eligible for suspension. Therefore, it is anticipated that there will be limited impact on prison and probation resources.

The transcript analysis further suggested that the sentence lengths for immediate custody given for these offences would overall remain broadly similar under the new guideline and that there would be limited need for additional prison places. Although there were some changes (increases and decreases) in the sentence lengths given under the new guideline compared to the original sentences imposed, overall, these were offset by each other. Therefore, the average custodial sentence length is expected to remain broadly similar under the new guideline. Further research with sentencers was conducted during the consultation stage. Sentencers taking part noted that the guideline helped them to determine the category of culpability and harm to apply for the scenarios they were presented with, and these were generally applied consistently.

Witness intimidation

The existing Magistrates' Court Sentencing Guidelines (MCSG) guideline for witness intimidation contains three categories of seriousness reflecting the 'nature of activity'. The new guideline adopts the Sentencing Council's standard stepped approach and applies to all courts. It is based on three levels of harm and three levels of culpability. The sentencing ranges have been set with current sentencing practice in mind, with a sentencing table ranging from a community order to four years' custody.

Most offenders sentenced for offences of witness intimidation are sentenced at the Crown Court (66 per cent in 2021) and analysis of a sample of Crown Court judges' sentencing remarks has been undertaken to understand the possible effects of the guideline on sentencing practice.

The transcripts analysed did not always include all of the information required to accurately assess the level of culpability and harm relevant to the cases detailed within them. Additionally, very few transcripts were analysed for those sentenced to fines or community orders (around a third of cases are sentenced at the magistrates' courts where sentencing transcripts are not available). Therefore, there is insufficient evidence to determine if sentence outcomes given under the new guideline would change for offenders currently receiving non-custodial sentences. However, these represent a small proportion of offenders (around 10 per cent received fines or community orders in 2021). Thus, it is expected that these cases would have a limited impact on prison and probation resources.

For custodial sentences, based on the limited information provided within the transcripts, it is anticipated that sentencing levels will remain relatively stable under the new guideline. For example, offenders currently receiving a suspended sentence order are likely to continue to do so. There were some changes (increases or decreases) in the lengths of custodial sentences given under the new guideline compared to the original sentences imposed. However, broadly speaking, these offset each other and so, overall, the average custodial sentence length is expected to remain broadly stable. As such, it is anticipated that any impact the guideline has on prison or probation resources would be limited. Additionally, sentencers taking part in the research during the consultation stage felt that the guideline helped them to determine which category of culpability and harm to apply for the scenarios they were presented with. These were generally applied consistently.

Risks

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

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 guidelines come into effect.

This risk is mitigated by information that was gathered by the Council as part of the guideline development and consultation phase. This included providing case scenarios as part of the consultation exercise which were intended to test whether the guidelines have the intended effect and inviting views on the guidelines. However, there are limitations on the number of factual scenarios which can be explored, so the risk cannot be fully eliminated. Transcripts of judges' sentencing remarks have provided a more detailed picture of current sentencing practice for these offences which has formed a large part of the evidence base on which the resource impacts have been assessed. However, it should be noted that due to the limited information within the transcripts and the case-specific nature of these offences, the findings of the resource assessment should only be interpreted as indicative of any resource impacts.

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

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

The Council takes a number of precautions in issuing new guidelines to try to ensure that sentencers interpret them as intended. For the new guidelines, sentencing ranges have been decided on by considering sentence ranges in the MCSG witness intimidation guideline, in conjunction with sentencing data and Council members' experience of sentencing. Transcripts of sentencing remarks of relevant perverting the course of justice and witness intimidation cases have been studied to gain a greater understanding of current sentencing practice and to ensure that the guidelines are developed with current sentencing practice in mind.

Additionally, research with sentencers carried out during the consultation period has helped to identify and address issues with implementing the guidelines. Consultees have also had the opportunity to share their views of the likely effect of the guidelines, and whether this differs from the effects set out in the consultation stage resource assessment. Further, the Council uses data from the Ministry of Justice to monitor the effects of its guidelines.

Further information

Data sources and quality

The Court Proceedings Database (CPD), maintained by the Ministry of Justice (MoJ), is the data source for these statistics. Every effort is made by MoJ and the Sentencing Council to ensure that the figures presented in this publication 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.

Further details of the processes by which MoJ validate the records in the CPD can be found inside the 'Technical Guide to Criminal Justice Statistics' within the [Criminal Justice System Statistics Quarterly \(CJSQ\) publication](#).

The data presented in this resource assessment only include cases where the specified offence was the principal offence committed. When an offender has been found guilty of two or more offences, the principal is the offence for which the heaviest penalty is imposed. Where the same disposal is imposed for two or more offences, the offence selected is the offence for which the statutory maximum penalty is the most severe. Although the offender will receive a sentence for each of the offences that they are convicted of, it is only the sentence for the principal offence that is presented here. Further information about these sentencing data can be found in the accompanying statistical bulletin and data tables published on the [Sentencing Council: Statistical bulletins webpage](#).

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

'Otherwise dealt with' covers miscellaneous disposals. Please note that due to a data issue currently under investigation, there are a number of cases which are incorrectly categorised in the Court Proceedings Database (CPD) as 'Otherwise dealt with'. Therefore, these volumes and proportions should be treated with caution.

Figures presented include the time period from March 2020 in which restrictions were initially placed on the criminal justice system due to the coronavirus (COVID-19) pandemic, and the ongoing courts' recovery since. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.

General conventions

Actual numbers of sentences have been rounded to the nearest 10 when fewer than 1,000 offenders were sentenced.

Proportions of sentencing outcomes have been rounded to the nearest integer. Percentages in this report may not appear to sum to 100 per cent, owing to rounding.