Assessing the impact and implementation of the Sentencing Council's Theft Offences Definitive Guideline

Summary

- The Sentencing Council's *Theft Offences Definitive Guideline* came into force in February 2016, replacing the Sentencing Guidelines Council (SGC) guideline *Theft and Burglary in a Building other than a Dwelling* (published in 2008) and guidance for theft offences in the *Magistrates' Court Sentencing Guidelines* (MCSG).

- The aim of the guideline was to ensure consistency in sentencing practice for the most common theft offences and no changes in overall sentencing severity were predicted.

- Analysis of data on trends, disposals and from a bespoke data collection in magistrates' courts were used to assess the impact of the *Theft Offences Definitive Guideline* on sentence outcomes.

- For all theft offences, it was found that the trend exceeded the upper limit of the Council's expectations (of where we might expect sentencing severity to sit had the guideline **not** been introduced) at some point post-guideline. However, for most offences this either happened some time after the guideline was in force, involved small increases exceeding the upper limit and/or the trend returned to where we expected sentencing severity to sit by the end of 2017. Therefore, for most offences analysed there was no clear-cut evidence that the guideline caused a change in average sentencing severity.

- For example, theft from a shop or stall exceeded the upper limit of expectations six months after the guideline came into force. Whilst the data from magistrates' courts suggests that the increase in sentencing severity could be related to previous convictions and value of goods being more influential post-guideline, it does not explain why this increase was delayed by six months.

- The two offences which did appear to show an upward trend in sentencing severity as a result of the guideline were abstracting electricity and going equipped for theft or burglary. These are the two lowest volume theft offences (representing two per cent of all adult offenders sentenced for theft offences covered by the guideline over the past 10 years) and they therefore had a minor impact on the overall theft trend.

- In conclusion the effect of the *Theft Offences* guideline on sentence severity was found to vary by offence. However, when considering the overall theft picture, although sentencing severity exceeded the upper boundary of where we would expect sentencing to sit six months after the guideline took effect, this was by a very small amount.

Introduction

The Sentencing Council was set up in 2010 and produces guidelines for use by all members of the judiciary when sentencing after conviction in criminal cases. The *Theft Offences Definitive Guideline* came into force in February 2016[1] and replaced the Sentencing Guidelines Council (SGC)[2] guideline *Theft and Burglary in a Building other than a Dwelling*[3] (published in 2008) and guidance for theft offences in the *Magistrates' Court Sentencing Guidelines* (MCSG). However, for some common offences, such as theft of a motor vehicle or theft of a bicycle there was no existing guideline. The new definitive guideline brought together guidelines for the most common theft offences. The following six guidelines are included:

• General theft;
• Theft from a shop or stall;
• Handling stolen goods;
• Going equipped for theft or burglary;
• Abstracting electricity; and
• Making off without payment.

The *Theft Offences Definitive Guideline* additionally had the aim of emphasising the impact on the victim when assessing the harm caused, rather than just the financial value of the goods stolen. Therefore in some guidelines, step one (which covers the assessment of harm) includes both victim impact and financial value as factors to consider when assessing harm. Additionally, the current theft from a shop or stall guideline includes specific monetary values within the harm model whereas the previous theft from a shop or stall guideline only referenced value as 'low' (under offence seriousness) and 'high' (as an aggravating factor).[4]

Another difference between the current and previous guideline was a change in structure for presenting the potential aggravating and mitigating factors. In the previous SGC guideline most of the aggravating and mitigating factors were annexed at the end of the guideline and included factors that applied to a wide range of offences rather than the individual offence under consideration. The current definitive guideline has the relevant aggravating and mitigating factors embedded in the guideline. Despite these changes, the guideline was not intended to change sentencing severity but to ensure consistency of sentencing.

Theft is a high-volume offence for which the majority of offenders are sentenced in the magistrates' court (92 per cent over 2007-2017). The number of adult offenders sentenced for theft offences as their principal offence covered by the guideline in the Crown Court and magistrates' courts has been steadily decreasing since 2011. In 2011, 111,000 adult offenders were sentenced for a theft offence compared with 64,800 adult offenders in 2017

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[1] https://www.sentencingcouncil.org.uk/wp-content/uploads/SC-Theft-Offences-Definitive-Guideline-content_FINAL-web_.pdf

[2] The SGC was the predecessor body to the Sentencing Council.

[3] The *Burglary Offences Definitive Guideline* came into force in January 2012: https://www.sentencingcouncil.org.uk/wp-content/uploads/Burglary_Definitive_Guideline_web_final.pdf

[4] The monetary values in the guideline were informed by observational research in the magistrates' courts, in which the value of theft offences was recorded across 42 offences. See: https://www.sentencingcouncil.org.uk/wp-content/uploads/SC-Theft-road-testing-bulletin-FINAL-web.pdf

(between 2007 and 2011 the number of offenders had increased with 87,000 offenders being sentenced in 2007).

Theft from a shop or stall is the most common theft offence (see Table 1). Over the period 2007-2017, 68 per cent of all adult offenders sentenced for a theft offence as their principal offence covered by the guideline were sentenced for a theft from a shop or stall. The second most common offence is general theft, accounting for 23 per cent of all adult offenders sentenced for a theft offence covered by the guideline over the same period. The other theft offences in the guideline are lower in volume.

Table 1: Number of adult offenders sentenced by guideline (2007-2017)

Theft Guideline	Total number of adult offenders sentenced (2007-2017)
Theft from a shop or stall	698,100
General theft	240,600
Handling stolen goods	57,600
Making off without payment	17,500
Going equipped for theft or burglary	15,800
Abstracting electricity	4,100
All	**1,033,800**

Source: Ministry of Justice (MoJ) Court Proceedings Database (CPD) data

As part of guideline development, qualitative research[5] was conducted with sentencers consisting of research interviews with 41 magistrates, 9 district judges and 13 Crown Court judges. The aim of this research was to explore sentencers' views and any potential behavioural implications of the draft guideline on sentencing practice, and various changes were made to the content of the guideline as a result of this work.

As well as using research to inform guideline development, one of the Sentencing Council's statutory duties under the Coroners and Justice Act 2009 is to monitor the operation and effect of its sentencing guidelines and to draw conclusions from this information.[6] Research and analysis were therefore undertaken to assess the impact of the guideline on sentencing outcomes. This paper describes the analysis undertaken, the findings from this, and how these findings might be interpreted.

Approach

The Council's resource assessments are concerned with anticipating any impact on sentencing practice that is estimated to occur as a result of the guideline, over and above any changes caused by unrelated or coincidental issues (e.g. changes in the volume and

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[5] https://www.sentencingcouncil.org.uk/wp-content/uploads/SC-Theft-road-testing-bulletin-FINAL-web.pdf

[6] See s128 Coroners and Justice Act 2009.

nature of offences coming before the courts). In the case of theft offences, the resource assessment[7] expected the guideline to improve consistency of sentencing but not to cause changes in the use of disposal types or in overall sentencing severity. By comparing the expected impact of the guideline with the actual impact observed in the sentencing data, the Council can determine whether the guideline is working as anticipated and decide whether any further work needs to be conducted. Where relevant, comparisons to the resource assessment will be made throughout this report.

Methodology

Analysis of trend data and time series analysis

The Ministry of Justice's Court Proceedings Database (CPD) was used to produce descriptive statistics to observe the changes in the type of disposals being imposed for the different offences and the average custodial sentencing length (ACSL)[8] for each offence, in a 12 month period before the guideline came into effect (November 2014 to October 2015) and the 12 months after the guideline came into effect (February 2016 to January 2017). This analysis covered adult offenders only (those aged 18 or over at the time of sentence) and only the offences covered by the guideline were included.

However, analysis of trends in outcomes and ACSLs do not take account of 'normal' fluctuations in the average severity of sentencing over time due to changes in sentencing practice which are unrelated to guidelines e.g. the changing number and seriousness of cases coming before the courts, any changes in charging practice and so on. The data were therefore also used to conduct time series analyses using data from 2007 to 2017. Time series analysis allowed us to distinguish between these 'normal' fluctuations in sentencing and changes that could reasonably be attributed to the guideline, by taking historical trends into account and using these to predict what the future values might have been in the absence of the guideline. These time series models allowed us to forecast likely sentencing outcomes in the absence of the guideline and then compare this to what did happen, by seeing if the actual trend in sentencing severity was within the 'forecasted severity region' in the model. If average severity stayed within the 'forecasted severity region' when the guideline came into force, then this suggests that the guideline did not have an impact on average sentencing, whereas if average severity went outside of this region, then the guideline may have caused changes to average sentencing. Statistical software[9] was used to determine the best fitting time series model for the dependent variable of sentencing severity separately for each offence. These models were then used to produce forecasts for sentencing severity.

The type of time series models that were used required sentencing data to be comparable but the data included a mix of sentences of varying lengths and types. To enable

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[7] https://www.sentencingcouncil.org.uk/wp-content/uploads/Final-Resource-Assessment-Theft.pdf

[8] The average custodial sentence length (ACSL) is the average (mean) sentence length for determinate custodial sentences only. It therefore excludes indeterminate sentences (life sentences or Imprisonment for Public Protection, IPPs). This approach for calculating ACSL is consistent with that used for sentencing statistics produced by the Ministry of Justice. Finally, the ACSLs have been adjusted using data from the Crown Court Sentencing Survey (for further information please see: http://www.sentencingcouncil.org.uk/analysis-and-research/crown-court-sentencing-survey/.) to provide estimates of the sentence length *prior* to any reduction for guilty plea. These estimates allow a better assessment of the use of sentencing guidelines as the category ranges specified in the guidelines are those before any guilty plea reduction is applied.

[9] Statistical Package for Social Sciences (SPSS).

comparability between different types of sentences, sentences were converted into a continuous 'severity scale', with scores ranging from 0 to 100, representing the full range of sentencing outcomes, from discharge (score of 0) to 20 years' custody (score of 100). However, it is acknowledged that this measure is not perfect and so should not be seen as an absolute, objective measure of sentencing severity (see annex for limitations).

Based on the available CPD data, the time series models were created to forecast the likely range of sentencing severity values for 21 months after the guideline came into force (March 2016 – December 2017[10]), assuming that no guideline had been issued. These forecasts are represented in the graphs presented in this report as the region between the dashed purple lines,[11] with the actual trend in sentencing severity represented by the solid purple line. These can be compared against each other to see if the sentencing severity post-guideline sat within the forecasted region.

Analysis of data collection in magistrates' courts

A bespoke pre- and post-guideline data collection exercise was conducted in a sample of 81 magistrates' courts to gather detailed information from magistrates and district judges about how they sentenced the highest volume theft offence, theft from a shop or stall.[12] The aim was to understand any changes in sentencing practice (e.g. in the use of particular factors) after the new guideline took effect. To this end, the data were collected in two waves: the pre-data was collected before the *Theft Offences Definitive Guideline* was in force (16th November 2015 – 5th February 2016) and resulted in a response rate of 30 per cent, with 2,949 records being used for this analysis. The post-guideline data collection stage took place after the guideline was in force (19th September – 16th December 2016) and resulted in a response rate of 26 per cent, with 2,417 records being used. Both stages involved magistrates and district judges being asked to complete a paper form for every offender sentenced for a theft from a shop or stall offence as their principal offence during the data collection time periods. The form asked sentencers to give detailed information on: the offence and sentence imposed; value of goods stolen, level of harm and culpability; presence of harm, culpability, aggravating and mitigating factors; information on sentence outcome; and reduction in sentence for a guilty plea (see annex for further detail).

The data were used to explore which guideline factors might have been influencing sentencing outcomes before (pre-data) and after the guideline (post-data) was introduced. Regression analysis[13] was also conducted to explore the effect of the aggravating, mitigating, harm and culpability factors on sentencing severity.

Overall Findings

Figure 1 shows that at certain points throughout 2016 and 2017 sentencing severity increased above the upper confidence limit and therefore outside the range in which we

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[10] This was the latest available data at the time the analysis was performed.

[11] On the graphs, the dashed lines show the confidence interval (also called the margin of error) of the estimate. At the 95 per cent confidence level, over many repeats of a survey under the same conditions, it is expected that the confidence interval would contain the true population value 95 times out of 100.

[12] Rand Europe administered the survey in the magistrates' courts.

[13] Regression analysis on just the ACSL was not conclusive due to the residuals in the model not being normally distributed and therefore violating one of the assumptions needed to run the regression.

would expect sentencing severity to sit had the guideline not been introduced. However, it should be noted that even when sentencing severity fell outside of the expected sentencing region for the theft offences overall (the dashed purple lines) this is by less than one severity score point out of a scale of 0-100. To put this into context a community order has a severity score of around 15 and a suspended sentence order has a score of around 31.

The overall picture of sentencing severity for the *Theft Offences Definitive Guideline* is largely dictated by the *Theft from a Shop or Stall* guideline due to the high volume of offenders sentenced for this offence (68 per cent of all adult offenders sentenced for a theft offence as their principal offence covered by the guideline over 2007-2017). The *Theft from a Shop or Stall* guideline (discussed fully in the next section) shows a slightly higher increase above the upper confidence limit than the overall theft trend here. This suggests that the other offences in the guideline had a moderating effect on the overall theft picture so that sentencing severity across all offences only just exceeded the upper confidence limit by a very small amount at two points in the time since February 2016.

Figure 1: Sentencing severity time series analysis for all theft offences covered by the guideline[14]
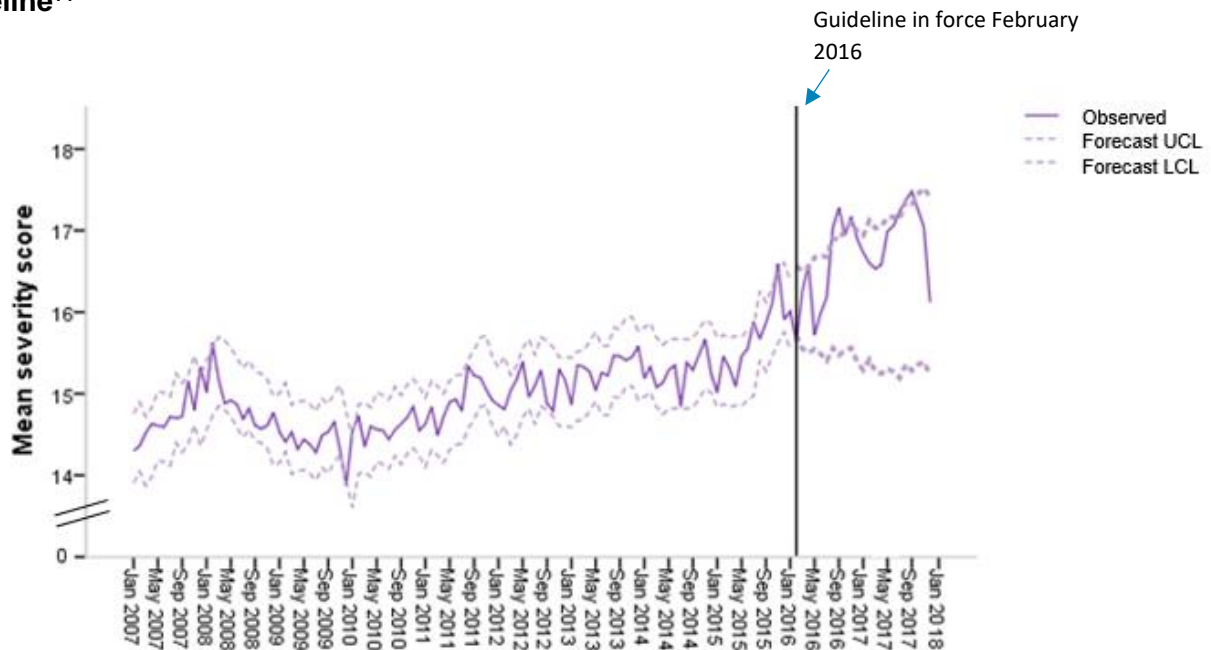
Source: MoJ CPD data

Offence specific findings

Theft from a shop or stall

Theft from a shop or stall is the highest volume offence in the *Theft Offences Definitive Guideline* (see Table 1). Overall the number of offenders sentenced for this offence as

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[14] The number on the vertical axis is the sentencing severity score. The forecast UCL refers to the 'upper confidence limit' of the forecast model, and the forecast LCL refers to the 'lower confidence limit'. The area within these limits represents the 95 per cent confidence interval for the forecast model.

their principal offence has decreased over the last 10 years. The number of offenders increased steadily from 54,200 in 2007 to 72,600 in 2010; the volumes then remained generally flat until 2013 (70,900 offenders). Since 2013 there has been a steady decrease with 47,500 offenders sentenced in 2017.

Figure 2 shows an upward trend for sentencing severity over time since about May 2014, which continued after the guideline came into force. This was driven by a change in disposals: a decrease in community orders (27 per cent in 2007 compared with 20 per cent in 2017), an increase in suspended sentence orders (6 per cent in 2007 compared with 11 per cent in 2017) and an increase in immediate custody (20 per cent in 2007 compared with 24 per cent in 2017)[15].

From June 2014 there was a change in how low value (under £200) thefts from a shop or stall were dealt with in the courts[16] however, there is no evidence to suggest that this is the cause of the increase in sentencing severity.

Another possibility that was explored was that the increase in sentencing severity from around this date could be because low value thefts, which are likely to receive less severe sentences, were increasingly being dealt with by out-of-court disposals. However statistics[17] show that the use of Penalty Notices for Disorder and cautions did not increase during the relevant period.

Figure 2: Sentencing severity time series analysis for theft from a shop or a stall

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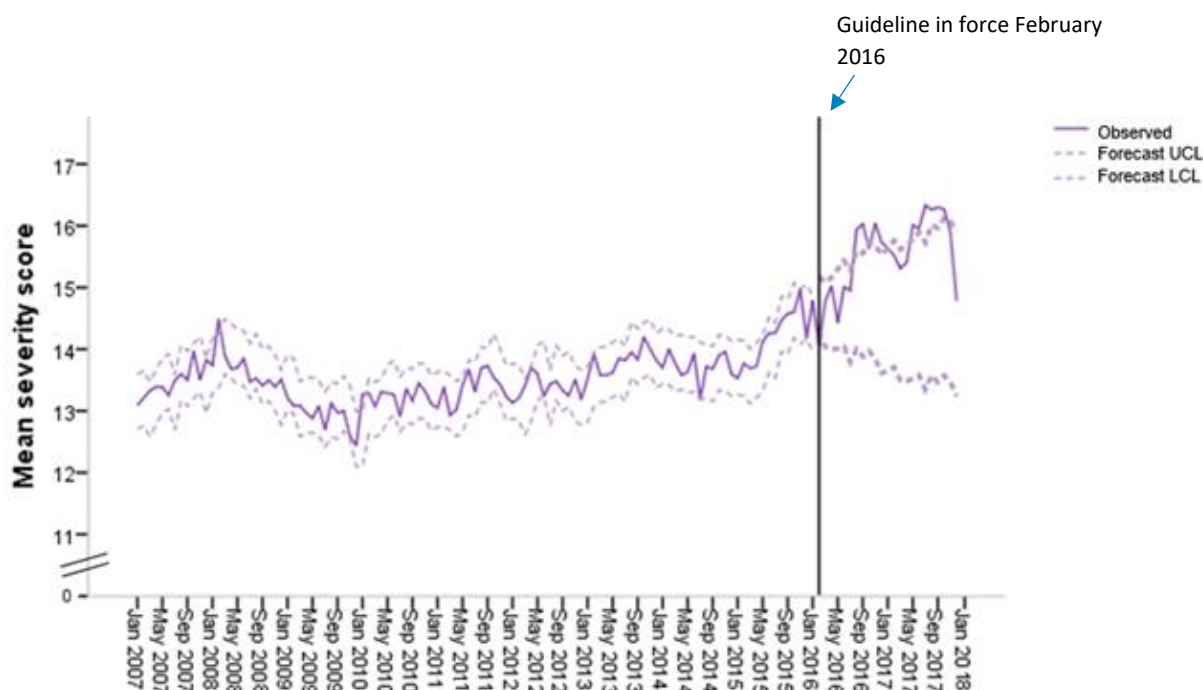
[15] The adjusted ACSL remained stable at two months pre- and post-guideline

[16] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/317719/low_value_shop_theft_guidance.pdf

[17] Published statistics on Penalty Notices for Disorder and cautions given from 2007 to 2017 in England and Wales can be seen by clicking on the "Overview tables" link within the annual Criminal Justice Statistics publication. The latest edition can be found here: https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2017. See tables Q2.1-Q2.3 and A2.1-A2.2.

Source: MoJ CPD data

Six months after the guideline came into force sentencing severity then increased beyond the upper confidence limit (illustrated by the dashed purple lines) which shows that sentencing severity was higher than our expectations had the guideline not been introduced. This is a relatively small increase (approximately 1-2 severity score points) but notable when compared to historic trends where severity fell within a fairly narrow range. This sudden increase was driven by small increases in the use of immediate custody (23 percent to 25 per cent) and suspended sentence orders (10 per cent to 12 per cent) between July 2016 and August 2016.

Whilst there was some fluctuation in and out of the expected region until the end of 2017 there was a drop at the end of the time series back into the expected region, which brought sentencing severity back to around the same level as it had been before the sudden increase. This was driven by a drop in suspended sentence orders (four percentage points) and an increase in fines and discharges (two percentage points each) between November 2017 and December 2017.

Given that the main increase happened six months after the guideline came into force, it is not clear that the change was due to the guideline, because if sentencing practice has changed we usually see changes at the point of guideline implementation.[18] We cannot say what caused the increase in sentence severity six months after the guideline took effect, but it seems unlikely that it was caused by an external change that affected sentencing severity more widely because we did not see a similar shift in severity at this point across comparable offences (all triable either way offences excluding theft). Because the shift was particular to theft from a shop or stall, the increase *may* be related to the introduction of the guideline, which was the only external change which could have affected theft from a shop or stall sentencing at around that time, as far as we know. The next section examines what elements of the guideline might have been having an impact on sentencing after guideline implementation.

Sentencing factors

Analysis of the data from the bespoke data collection was conducted to compare the frequency of factors being used before and after the guideline came into force. Regression analysis was also conducted to explore the effect of sentencing factors on severity pre and post the guideline's introduction. Generally, there were minimal differences between the pre- and post-data. Most of the culpability, harm, aggravating and mitigating factors were used with the same frequency before and after the guideline's implementation (see Table 2).

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[18] Offences which have seen an immediate increase in sentencing severity after the guideline was in force include GBH with intent, non-domestic burglary and sexual assault, see guideline assessments at: GBH with intent, non-domestic burglary and sexual assault.

Table 2: Frequency of culpability and harm value factors cited pre- and post-guideline (theft from a shop or stall only)

Culpability/Value Factors	Pre-guideline	Post-guideline
Up to £50	41%	34%
£51-100	19%	20%
£101-£200	18%	20%
£201-£500	14%	18%
£501-£1000	6%	6%
More than £1000	2%	2%
Little or no planning	67%	63%
Some planning	30%	33%
High level of planning	3%	3%
No use of force/threat	95%	95%
Limited use of force/threat	4%	4%
High use of force/threat	1%	1%
Lone offender	70%	70%
Limited role	4%	4%
Significant role	9%	11%
Leading role	16%	15%
Use of a child to facilitate offence	1%	1%
Offender subject to banning order	1%	1%
Involvement of others through coercion, intimidation or exploitation	1%	1%
Involved through coercion, intimidation or exploitation	1%	2%
Total	**2,949**	**2,417**

Source: Magistrates' court data collection
The values do not add up to 100 per cent due to missing data and the culpability factors do not add up to 100 per cent as multiple culpability factors may have applied.
The total is the number of forms collected pre- and post- guideline. For the categories of value, planning, threat and role, the percentage calculations do not include cases where data on these factors was missing.

One of the main differences between guidelines for this offence is that the previous SGC guideline did not place a strong emphasis on value: the factor 'Goods stolen of low value' placed the offender at the lowest level of seriousness, but there was no further mention of value under seriousness, rather 'Offender targeted high value goods' was an aggravating factor. The current guideline, by contrast, specifies values at all three levels of harm, so value is a key feature taken into account at step one. On the data collection form, sentencers were asked to record the total value of goods stolen. Regression analysis found that for cases where the value was over £200, it had a greater effect on sentencing severity post-guideline compared to pre-guideline, suggesting that changing the value to specific figures may have been one of the factors which led to more severe sentences[19].

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[19] Due to the difference in categorisation between the previous (four categories) and current (three culpability categories and three harm categories) guideline it was not possible to produce a robust enough analysis to explore value further.

The value 'up to £50' was the most prevalent value in both the pre (41 per cent) and post (34 per cent) phase (see Table 2). This meant that most cases tended to sit in the lowest category, particularly as the other harm factors were infrequently cited (except the 'Effect on business' factor which was cited more regularly) which shows that the harm categorisation is largely dependent on the value of goods.

Based on the analysis of the bespoke data collection, another potential explanation for the increase in sentencing severity six months after the guideline was introduced concerns previous convictions. For both pre- and post-guideline implementation, the factors that had the greatest effect on severity were those associated with previous court interactions (failure to comply with court orders, offender was on bail or licence and four or more previous convictions). Additionally, for both pre- and post- the introduction of the guideline, the factor which had the greatest effect on sentencing severity was having 20 or more previous convictions. However, the analysis also identified that four or more previous convictions was shown to have a greater effect post-guideline than pre-guideline. This could be due to the information on previous convictions being more salient in the current guideline compared to the previous guideline: the current guideline has more detailed information on previous convictions than the previous guideline and has this information placed clearly next to the starting point table with some of the text in bold. It also provides guidance for justifying adjustment outside of the category range, which was not covered by the SGC guideline. This makes it clear to the sentencer that relevant recent convictions may increase the sentence, and may go outside of the category range in the sentencing table. The influence of previous convictions on sentencing severity is further substantiated by magistrates indicating that previous convictions were the single most important factor affecting their sentencing: in response to a free text question 'What would you say was the single most important factor affecting your sentence?' references to previous convictions were the most common answer, accounting for between one-quarter and one-third of factors in pre- and post-guideline data.

However, even though this analysis shows that previous convictions and value were having a greater effect on sentencing severity post-guideline, it should be noted that this does not explain why the increase in sentencing severity only occurred six months after the guideline was implemented. Because of this delay, which is contrary to the immediate effect we usually see if a guideline has changed sentencing practice, we cannot conclusively say that the guideline had an unanticipated effect. Rather, it may be that other unknown factors contributed to the change at this point.

General theft

The *General Theft* guideline covers multiple offences including:

- Theft from the person;
- Theft in a dwelling;
- Theft in breach of trust;
- Theft from a motor vehicle;
- Theft of a motor vehicle;
- Theft of a pedal bicycle; and
- all other section 1 Theft Act 1968 offences (excluding theft from a shop or stall).

Over the last 10 years the volume of adult offenders sentenced for general theft offences has decreased from 23,800 in 2007 to 12,600 in 2017. Whilst there was some fluctuation in the earlier years (increasing from 2007 to 2008, decreasing in 2009 and then steadily

increasing to 2011), the number of adult offenders sentenced for a general theft offence has steadily decreased since 2011.

Figure 3 shows an upward trend for sentencing severity over time, particularly before the guideline was introduced. This was mostly driven by a decrease in community orders (35 per cent in 2007 compared with 27 per cent in 2015), an increase in suspended sentence orders (11 per cent in 2007 compared with 16 per cent in 2015) and an increase in immediate custody (22 per cent in 2007 compared with 27 per cent in 2015). This finding corresponds with general trends in sentencing (likely to have been contributed to by the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO)) [20], whereby there was a decrease in community orders and an increase in suspended sentence orders between 2005 and 2015.[21]

Figure 3: Sentencing severity time series analysis for general theft offences
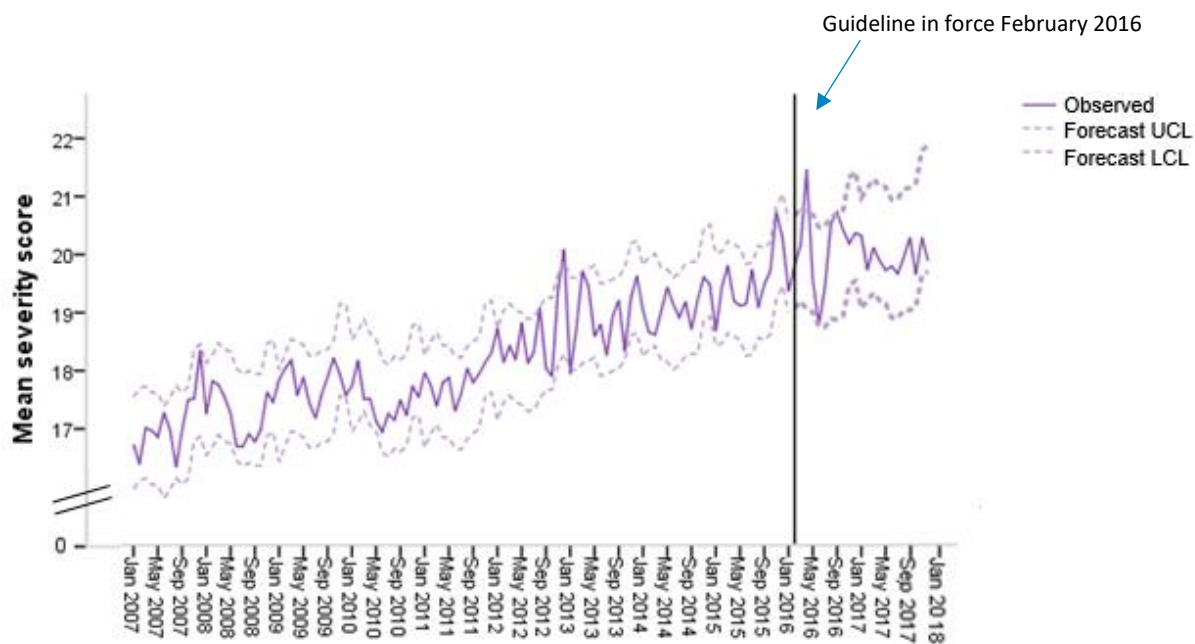
Source: MoJ CPD data

As shown in Figure 3, immediately following guideline implementation, there was a sharp increase in sentencing severity which crosses the upper confidence limit of the forecast range (represented by the dashed line in Figure 3) and, shortly afterwards, a sharp decrease to the boundary of the lower confidence limit. The point of this upward fluctuation was therefore higher than where we would expect sentencing to sit had the guideline not been introduced.

The increase was driven by a small increase in immediate custody and suspended sentence orders, and a decrease in fines. The sharp decrease in sentencing severity that followed shortly afterwards was driven by fines, suspended sentence orders and immediate custody going approximately back to where they were in the month before the

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[20] The Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) 2012 took effect in December 2012. It increased the maximum length of a sentence which could be suspended from one to two years, and also allowed discretion as to whether or not to impose community requirements on a suspended sentence order (previously there had to be at least one requirement). These changes are likely to have contributed to an increase in suspended sentence orders. See Sentencing Council, Final Stage Resource Assessment: Imposition of Community and Custodial Sentences Guideline, available at: https://www.sentencingcouncil.org.uk/wp-content/uploads/Final-resource-assessment-imposition.pdf.
[21] The adjusted ACSL remained stable at nine months pre- and post-guideline.

guideline. This is the largest difference month-on-month for immediate custody in the time series. A breakdown by the different offences in this guideline (listed above) shows that most offences followed a similar pattern to the overall general theft time series and therefore shows that the general theft trend was not caused by just one offence in this guideline.

Shortly after the immediate fluctuation in sentencing severity, the trend then decreased to stay within the forecast range for the remainder of 2016 and 2017 which is in line with the resource assessment. This suggests that on the whole, the guideline has not increased sentencing severity outside of the expected region. Unfortunately, we do not have data on how sentencers were sentencing in the immediate weeks after guideline implementation because the data collection was for theft from a shop or stall only. The stability of the sentencing in the latter part of the time series suggests that the rise and fall was atypical and probably not a cause for concern.

Handling stolen goods

Over the last 10 years (2007-2017) the number of adult offenders sentenced for handling stolen goods as their principal offence has decreased from 5,900 in 2007 to 2,700 in 2017. Between 2007 and 2011 the volumes fluctuated but then there was a steady decrease from 2011.

Figure 4 shows that sentencing severity has increased over time. This occurred before the guideline was in force: in line with the post-LASPO trend in the use of community orders and suspended sentence orders, the use of community orders for offenders sentenced for handling stolen goods decreased from 38 per cent in 2007 to 28 per cent in 2015 and the use of suspended sentence orders increased from 10 per cent in 2007 to 17 per cent in 2015. Immediate custody also increased during this period, from 23 per cent to 27 per cent. The same pattern continued after the guideline was in force, with the use of community orders falling a little to 25 per cent, and the use of custody (both immediate and suspended) increasing to 18 and 31 per cent respectively.[22]

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[22] The adjusted ACSL remained stable at 11 months pre- and post-guideline.
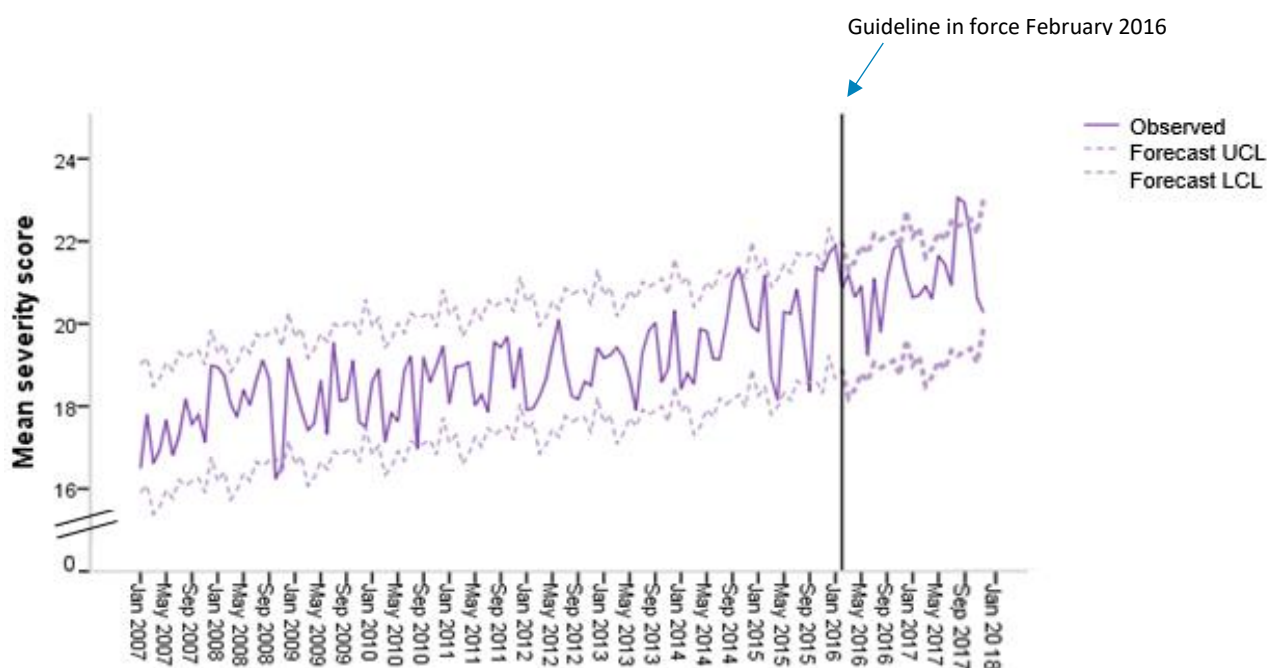
Figure 4: Sentencing severity time series analysis for handling stolen goods

Figure 4 shows that sentencing levels are prone to fluctuation. It also shows that sentencing severity generally stayed within the forecast region after the guideline came into force. There is a short time period when it exceeded the upper confidence limit, however, this is a relatively long time after the guideline was in force which suggests there is no strong evidence that the spike in sentencing was due to the guideline. Additionally, shortly afterwards, sentencing returned to the expected sentencing severity region, suggesting that the guideline did not have an effect on average sentencing severity.

Going equipped for theft or burglary

The number of adults sentenced for going equipped for theft or burglary decreased from 1,500 in 2007 to 880 in 2017. The volumes were generally increasing until 2013 but then steadily decreased.

Figure 5 shows that sentencing severity increased after the guideline was in force. This trend was due to a decrease from 2015 to 2016 in the use of community orders (31 per cent to 25 per cent) and fines (16 per cent to 12 per cent), and an increase in immediate custody (30 per cent to 35 per cent) and suspended sentence orders (13 per cent to 18 per cent). This was the biggest year-on-year change in disposals identified in this time series. Whilst the use of immediate custody as a disposal increased, the adjusted ACSL[23] decreased from six months to five months pre-and post-guideline. The 2017 figures were similar to 2016: community orders (24 per cent), fines (13 per cent), suspended sentence orders (19 per cent) and immediate custody (35 per cent).

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[23] Pre-guilty plea sentence lengths have 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.

Figure 5: Sentencing severity time series analysis for going equipped for theft or burglary
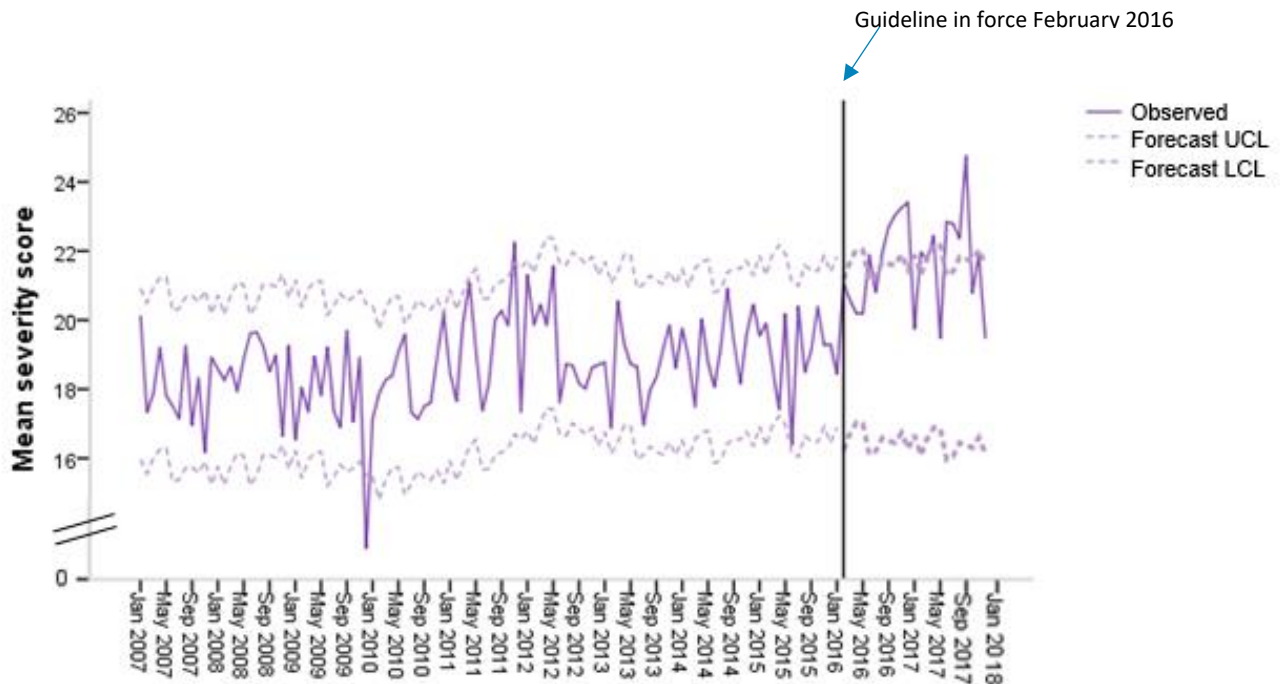
Source: MoJ CPD data

Again, we do not have information from the data collection to help explain the trend, but this increase could be due to the current guideline now having more severe disposals than the previous MCSG guideline.[24] This is supported by the fact that the proportion of offenders sentenced in the magistrates' courts and the Crown Court remained generally consistent over time[25] which suggests that magistrates are retaining cases but being guided by the higher ranges now available in the current guideline.

Sentencing severity only exceeded the upper confidence limit approximately four months after the guideline was in force and then around 15 months later. However, given the delay and inconsistency of the increases outside of the upper limit we cannot be sure of the reason for the sudden change in sentencing severity outside of the expected region.
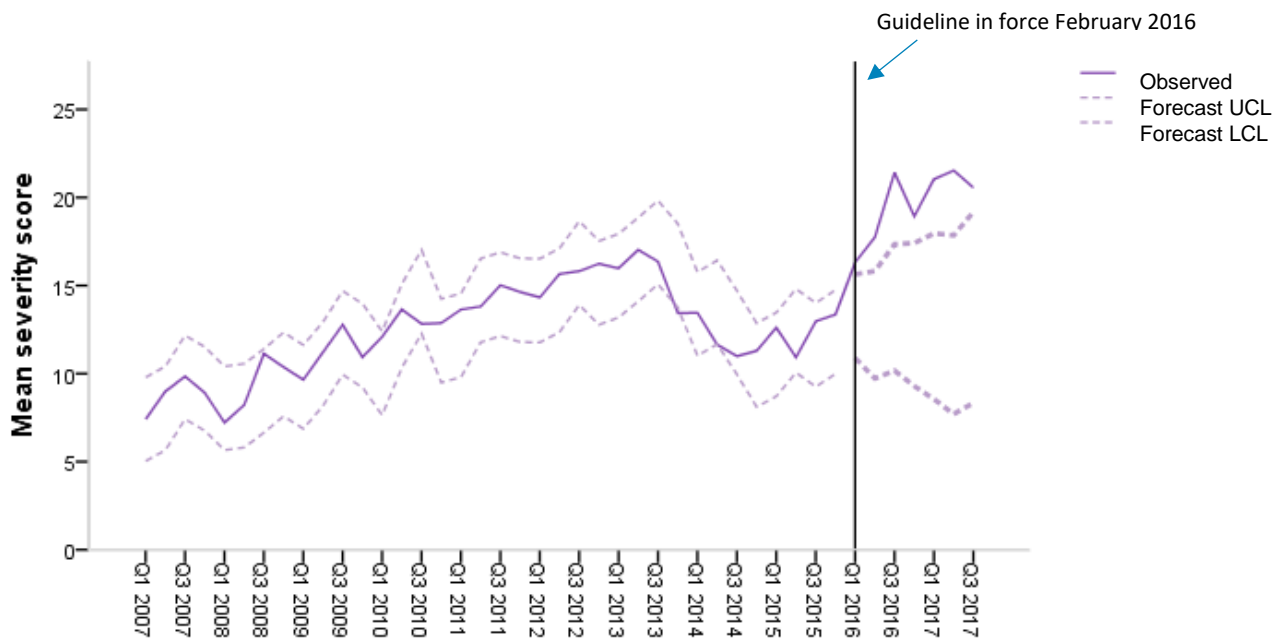
Abstracting electricity

This is a low volume offence (see Table 1) with the number of offenders sentenced for abstracting electricity as their principal offence decreasing from 380 in 2007 to 180 in 2017.

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[24] The previous MCSG guideline highlighted a sentencing range of Band C fine to high level community order for 'possession of items for theft from shop or of vehicle' and medium level community order to Crown Court for 'possession of items for burglary, robbery', and does not include a reference to custody ranges. However, the current 'going equipped' guideline includes the factor 'offender equipped for robbery or domestic burglary' in high culpability which can lead to a range of 26 weeks' to 1 year 6 months' custody and also has custodial disposals included in the range for medium culpability offenders.

[25] Excluding a peak in Crown Court sentencing during 2010 and 2011.

Figure 6[26] shows that sentencing severity increased after the guideline was in force and that this effect was immediate. The trend also exceeded the upper limit of the forecast region in which we would expect sentencing to sit. This upwards trend was driven by a decrease in fines and community orders, and an increase in suspended sentence orders. The use of suspended sentence orders increased from 10 per cent to 38 per cent when comparing 12 months pre-guideline with 12 months post-guideline. The adjusted ACSL increased from four months to eight months pre-and post-guideline and fines, discharge and COs all decreased.

Figure 6: Sentencing severity time series analysis for abstracting electricity

Source: MoJ CPD data

Analysis of the CPD data found that there is now a higher proportion of abstracting electricity cases sentenced at the Crown Court rather than the magistrates' court (5 per cent in 2007 compared with 43 per cent in 2017). Whilst the proportion of cases has fluctuated over the years, the years after the guideline was in force showed the highest proportion of cases sentenced in the Crown Court since 2007. As there was no previous Crown Court guideline it could be that the guideline now leads judges to higher sentences than they were giving previously without a guideline. In addition to this, the magistrates' court sentencing range also appears to be higher in the current guideline compared to the previous MCSG abstracting electricity guideline. Whilst the previous guideline only resulted in a custodial sentence 'where the offence results in substantial commercial gain', the current abstracting electricity guideline lists several factors at the top end of culpability

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[26] Due to the low volumes of adult offenders who are sentenced for abstracting electricity the time series used quarterly data, as opposed to monthly data, for this offence. As the guideline came into force on 1 February 2016, the first quarter in a year is February to April and the final quarter in a year is November to January of the following year. Because the current data ends with December 2017, the final quarter only includes November and December 2017 and was therefore excluded due to the limited information available. The final quarter used in the time series for abstracting electricity was August to October 2017.

and harm, essentially meaning that a wider range of cases could be sentenced in the upper range of the sentencing table and therefore receive a custodial sentence. Overall this seems to suggest that the guideline led to an increase in sentencing severity.

Making off without payment

Volumes of offenders sentenced for making off without payment as their principal offence steadily increased between 2007-2011, with 1,980 offenders sentenced in 2011. Since then there has been a downward trend, with the lowest volume of offenders in the last 10 years sentenced in 2017 (890).

As can be seen in Figure 7 the trend remained within the forecasted region until early 2017 (a year after the guideline came into force). Throughout 2017 whilst there was some fluctuation in and outside of the expected region it did show a general increase in sentencing severity compared with the earlier trend.

Figure 7: Sentencing severity time series analysis for making off without payment
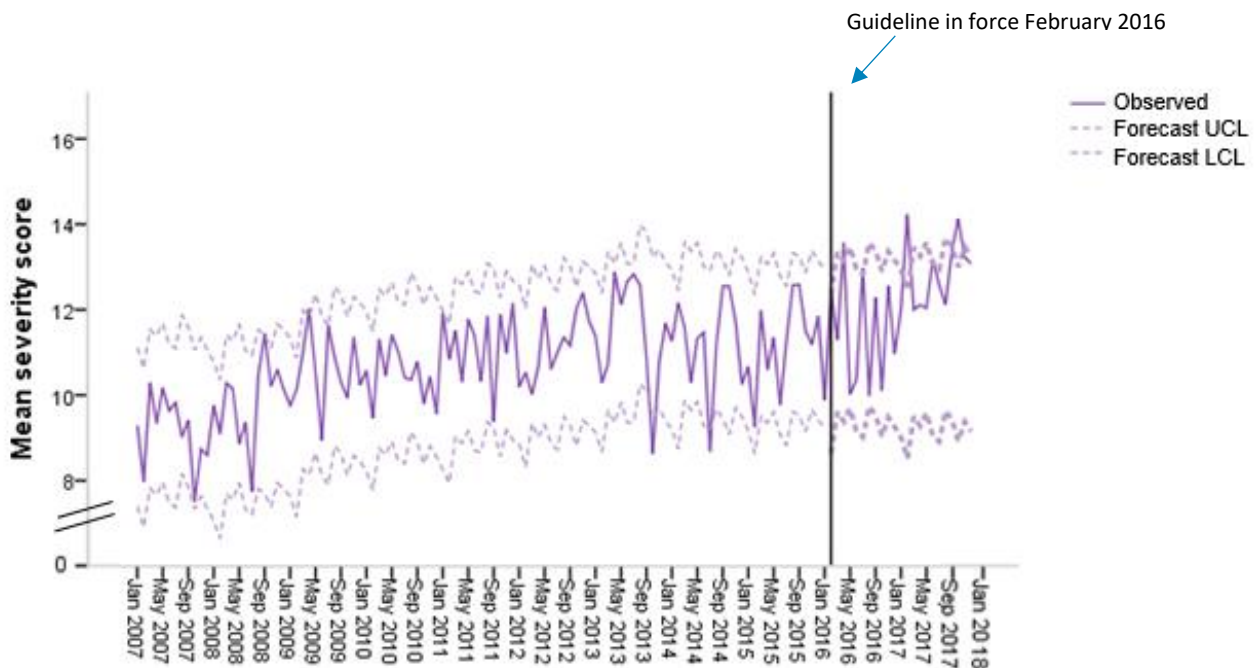
Source: MoJ CPD data

The yearly sentencing outcomes for this offence suggest that this difference may be driven by a decrease in discharges (19 per cent in 2016 compared with 16 per cent in 2017), a decrease in fines (34 per cent in 2016 compared with 30 per cent in 2017) and an increase in immediate custody (10 per cent in 2016 compared with 12 per cent in 2017).

Given that this increase in sentencing severity is a year after the guideline came into force, it is not thought that the guideline drove this change in sentencing severity.

Conclusion

In conclusion, the effect of the *Theft Offences Definitive Guideline* on sentencing severity varied by individual offence. However, when considering the overall theft picture, although sentence severity exceeded the upper boundary of where we would expect sentencing to

sit had the guideline not been introduced, this was by less than one severity score point from a scale of 0-100. Additionally, the trend then returned to the expected sentencing severity region by the end of 2017.

When considering the individual trends, at some point for all offences the sentencing severity trend exceeded the upper confidence limit. For general theft, abstracting electricity and making off without payment[27] this happened immediately after the guideline was implemented. For theft from a shop or stall, handling stolen goods and going equipped this increase only occurred some time after the guideline had been implemented (4-12 months). Given this delay and the fact that if a guideline has changed sentencing practice we usually see changes at the point of guideline implementation, there is no strong evidence to suggest that the increase in sentencing severity was caused by the implementation of the *Theft Offences* guideline. Whilst regression analysis for theft from shop or stall found that previous convictions and value were having a greater effect on sentencing severity post-guideline compared with pre-guideline, this does not explain why this change occurred six months after the guideline was implemented, nor does it explain the fluctuation in sentencing severity throughout the rest of the trend post-guideline.

Abstracting electricity and 'going equipped' were the two offences which resulted in an immediate upward trend after the guideline had been implemented, and even though the 'going equipped' trend shows that it fell back within the region of where we expected sentencing severity to be, the general trend post-guideline was still higher than the general trend pre-guideline. Therefore, it appears that the guideline led to an unanticipated change in trend for these two offences. This could be due to the current guideline pitching sentences higher than the previous MSCG guideline. However, it is important to note that abstracting electricity and going equipped are the two lowest volume theft offences (see Table 1), making up only two per cent of all adult offenders sentenced for theft offences over the past 10 years. Therefore, even though this does appear to show the guideline led to higher sentences for these two offences, this has a very minor impact on the overall theft picture.

Given that the overall trend returned to the expected sentencing severity region only at the end of 2017 the Council has decided to continue to monitor the trend over time before deciding on whether or not to revisit the guideline.

Acknowledgements

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[27] This trend met the boundary of the upper confidence limit.

Annex

Quantitative method: technical annex

Severity scale

The severity scale provides a useful method for combining several different sentencing trends within one measure. However, it has some limitations that should be taken into account when interpreting findings. The scale does not incorporate detailed information for all sentencing outcomes; for example, different levels of community orders and different fine amounts/bands are not part of the scale, meaning that changes within these outcomes are not visible using the scale. Also, the scale may mask different trends that happen at the same time: for example, a small shift in the use of fines towards the use of discharges, and a simultaneous shift from suspended sentence orders to immediate custody may, when the average severity is calculated, appear as no change at all (i.e. they may cancel each other out). However, when monitoring the effects of a guideline, the Council ensures that individual trends in sentencing are explored, where data are available, and so although changes such as this may not be visible using the scale, they are still observed and studied in other parts of the analysis. An external academic project[28] is currently under way to develop a new severity scale that takes into account more sentencing information, and it is expected that this scale will be used in future guideline evaluations once completed.

Time series

The time series analysis takes account of pre-guideline trends in forecasting where we might expect sentencing to sit, post-guideline. However, it does not take account of new trends post guideline, so if, for example, case mix changed coincidentally after guideline implementation, this would not be accounted for. For this reason, our analysis tends to focus on the point of guideline implementation and the months immediately after, when we can be fairly confident that there was no *other* external factor that affected sentencing nationwide (although a coincidental, sharp rise in case mix cannot be ruled out).

Magistrates' courts data collection

The bespoke magistrates' court data collection included those courts which were found to have the highest volume of theft from a shop or stall offences (and some drug offences[29]). During this data collection respondents were asked to only complete a form where the principal offence was theft from a shop or stall. Forms were excluded from the analysis where the wrong form was completed, SSOs had been activated, the offender was under 18, no valid data were recorded on the form or there were duplicate records. For the pre-data collection 79 forms were excluded from the analysis and for the post data 169 forms were excluded. Bias testing (on gender, age, sentence outcome and sentence length) identified that the data collection was representative of the wider CPD data.

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[28] Pina-Sánchez, Gosling and Geneletti (2018) *Tackling Selection Bias in Sentencing Data Analysis: A New Approach Based on Mixture Models, Expert Elicitation Techniques, and Bayesian Statistics*. Available at: https://www.ncrm.ac.uk/research/SentencingData/

[29] The data collection in the magistrates' courts also covered possession of a controlled drug (class A and B) and production of a controlled drug (class B only) or cultivation of cannabis plant, where these offences were the principal offence only. These findings are included in the published assessment of the Drug Offences guideline: https://www.sentencingcouncil.org.uk/wp-content/uploads/Drug-offences-guideline-assessment.pdf.