

What next for the Sentencing Council?

Consultation

10 March 2020 to 9 June 2020

About the consultation

- To:** This consultation is open to everyone including members of the judiciary, legal practitioners and any individuals who work in or have an interest in criminal justice.
- Duration:** From 10 March 2020 to 9 June 2020
- Enquiries (including requests for the paper in an alternative format) to:** Office of the Sentencing Council
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- Additional ways to feed in your views:** This consultation exercise is accompanied by a resource assessment, and an online questionnaire which can be found at:
www.sentencingcouncil.org.uk
A consultation event is taking place on 3 April 2020. For more information, please see www.sentencingcouncil.org.uk.
- Response paper:** Following the conclusion of this consultation exercise, a response will be published at: www.sentencingcouncil.org.uk
- Freedom of information:** We will treat all responses as public documents in accordance with the Freedom of Information Act and we may attribute comments and include a list of all respondents' names in any final report we publish. If you wish to submit a confidential response, you should contact us before sending the response. **Please note:** we will disregard automatic confidentiality statements generated by an IT system.
In addition, responses may be shared with the Justice Committee of the House of Commons.
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Foreword from the Chairman



This year marks the 10-year anniversary of the Sentencing Council for England and Wales. It has been a busy 10 years: we have produced 27 sets of definitive guidelines encompassing 145 separate guidelines that cover 227 offences and eight overarching topics.

Developing guidelines is a collaborative process; as well as input from Council members and the small multi-disciplinary team who support our work, we rely on the cooperation of individuals and organisations working in the criminal justice system and beyond to ensure that we have the fullest information possible to draw on.

Over the years, thousands of magistrates and judges have completed surveys or participated in detailed research, providing us with evidence to underpin the guidelines. We have held more than 30 public consultations, which have received almost 4,000 responses.

The Council does more than produce guidelines; we publish research and statistics on sentencing, and we promote public understanding of sentencing through the information provided on our website, by providing educational materials for use in schools and by working with other organisations, for example the police.

The purpose of this consultation is not to look back (though it does reflect on the work of the Council to date), but to look forward. We are calling on all those with an interest in criminal justice and sentencing to contribute to a discussion on what the Council's future objectives and priorities should be.

On behalf of the Council I would like to thank all those individuals and organisations who have worked with us over the past 10 years and we look forward to continuing to work with you in the future.

A handwritten signature in black ink, which appears to read "Tim Holroyde". The signature is written in a cursive style with a long horizontal stroke at the end.

Lord Justice Holroyde

Executive summary

The Sentencing Council for England and Wales was set up as an independent non-departmental public body by the Coroners and Justice Act 2009 (C&JA 2009). The Council's main overarching objectives are to: promote a clear, fair and consistent approach to sentencing; produce analysis and research on sentencing; and work to improve public confidence in sentencing. The legislation sets out a number of duties that the Council *must* fulfil and a range of functions that *may* be carried out (Annex B in the full consultation document outlines these).

The production and revision of guidelines (including analysis and research and communication activity to support guidelines) has formed a large part of the Council's focus. To date we have produced 27 sets of definitive guidelines encompassing 145 separate guidelines that cover 227 offences, as well as guidelines on eight overarching topics.

This year marks the 10th anniversary of the Sentencing Council. The Council is satisfied that we have largely delivered what we initially set out to achieve by 2020, and now is a natural point at which to take stock of our progress and look forward to what the Council's priorities should be for the next five to 10 years. We are therefore seeking views as to what the Council's future objectives and priorities should be.

The consultation

The consultation outlines the key issues that have emerged from early work to consider the Council's priorities. Full details are contained within the main consultation document.

We recognise that not all respondents will want to answer all the questions, so we invite you to select those areas of the consultation that are of most interest to you.

General matters

The Council's provisional view is that we ought to continue to focus on the development and revision of guidelines. This is where we believe the Council can add most value. However, we are seeking views on whether this is the right approach and to what extent we should devote some of the Council's limited resources to other functions.

In considering the choices that we could make, it should be noted that the resources available to the Council are small. The Council itself consists of 14 members, and is supported by an office of 17 staff members with a small financial budget. Therefore, responses to the consultation questions will need to be considered in the light of the resources available.

If the Council did want to rebalance current priorities, or take on additional areas of work, this is likely to require slowing down the rate of guideline production to release officials and/or resources to undertake other work. The Council will continue to make the case for additional funding and argue for what more we could do if more resources were available. However, we must work on the assumption that the resources we currently have will not increase significantly.

On these more general matters, the Council seeks views on the following issues:

- **Is the Council right to continue to focus on the statutory duties that we have prioritised to date (broadly speaking: guideline development, monitoring and evaluation of guidelines, public confidence)? If not, what are your reasons for this?**
- **In particular, do you think the Council's current primary focus on guideline development and revision (including analysis and research and communication activities to support guidelines) is correct and should continue? Please provide reasons.**
- **If you think the Council should focus more on other activities please outline those areas and your reasons why.**
- **Taking account of your answers above, what do you think the balance should be between guidelines (and the work that supports them) and other activities that you have identified? Please outline your reasons.**
- **Are there other sources of funding or funding models that we should consider pursuing to better fulfil the Council's statutory duties?**
- **Are there any other broad matters that you would like to raise, or comments you wish to make on the Council, that are not covered by your answers to any other questions?**

Outline of the proposals

The rest of the consultation has been split into five broad areas: developing and revising sentencing guidelines; analysis and research; promoting public confidence; costs and effectiveness in sentencing; and how we work.

Developing and revising sentencing guidelines

Guidelines have always been at the core of the Council's work. As well as the production of guidelines, we have also revised some of our own guidelines. We have made these

revisions to take account of changes to legislation, in response to an evaluation/assessment or both.

Guidelines fulfil their primary purpose in promoting a consistent approach to sentencing. They also improve transparency, thus contributing to promoting public confidence in the criminal justice system. They are underpinned by evidence of current sentencing practice relating to the nature of offending, characteristics of offenders and the effect on victims.

The Council has to consider which guidelines should be developed (or revised) and how these should be prioritised. As well as seeking views on the criteria by which the Council schedules the development of guidelines, we also seek views around how we should balance the relationship between three sets of competing priorities:

- new guidelines/revisions of existing guidelines;
- high volume offences (offences where there is most demand and where there can be most impact) or niche offences (low volume or unfamiliar offences for which sentencers often need help and which can demonstrate the Council's responsiveness to public concerns); and
- offence specific guidelines/overarching guidelines.

In particular, we are interested in views on the following:

- What are your views of the extent to which the Council, through the development of sentencing guidelines, meets the duties to have regard to:

- **the need to promote consistency in sentencing;**
- **the impact of sentencing decisions on victims; and**
- **the need to promote public confidence in the criminal justice system?**

Please suggest any ways in which you think this could be improved.

- What are your views on the suggested criteria (in paragraph 66 of the main consultation document) for prioritising the development or review of guidelines? Please suggest any additional criteria that you think should be considered or criteria you think should be removed.

- Should the Council expand the policy for making changes to existing guidelines (short of a full revision) as outlined in paragraph 53 of the main consultation document? Please suggest what situations should be covered by such a policy.

- Can you suggest practical ways in which the flexibility afforded by delivering guidelines in a digital format could be used by the Council to improve guidelines?

Is there a guideline for a particular offence or set of offences that the Council should develop or revise as a priority? Please give reasons.

- **Is there a guideline for a particular overarching issue that the Council should prioritise? Please give reasons and explain how best you think this could be addressed.**

Analysis and research

Analysis and research are integral to ensuring the Council develops guidelines that meet the aims and objectives of the Council and contribute to all stages of the guideline development process. We draw upon a range of different data sources, as well as undertaking our own research to inform our work (both quantitative and qualitative).

There are several analytical areas to which the Council could consider devoting more resources if these were to be regarded as priority areas, if more resources were to become available, or if it were possible for the Council to take forward some areas by increasing its collaborative work with academics and external organisations.

These areas may include the improvement of the data we draw upon for our work (either by identifying new data sources or strengthening existing data sources) and broadening out the type of impacts we assess as part of our guideline evaluations. It may involve exploring in more detail the ways in which guidelines are used in practice, or undertaking more analysis on the impact of guidelines on specific demographic groups.

It may also include undertaking work on those duties the Council has addressed in a relatively limited way to date. The Council therefore invites views on the following:

- **Are there any ways in which the technical aspects of the Council's analytical work could be improved? If so, please state what these might be (for example, improving the data sources we draw on or the time we give to accessing different types of data). Please be as specific as possible.**
- **Are there any ways in which the focus of the Council's analytical work could be improved? If so, please state what these might be (for example, broadening out the types of impacts we evaluate – including more in relation to specific demographic groups, focusing more on assessing consistency in sentencing, or exploring the ways in which the guidelines are used in practice). Please be as specific as possible.**

- **Do you feel that the Council has prioritised, either too highly or insufficiently, any of our statutory duties that specifically relate to analytical work? If so, please state which ones and give your reasons.**
- **Are there any other areas that you feel the Council should be considering as part of the programme of analytical work? If so, please state what these are and give your reasons.**
- **Which areas of analytical work do you feel the Council should make the highest priority? Are there any areas that you feel are so important that they would warrant slowing down the pace of guideline development/revision? Please state what these areas are and give your reasons.**
- **Are there any areas of work that you feel would be more suitable for an academic institution or external organisation to undertake? If so, please state what these are and give your reasons.**

Promoting public confidence

The Sentencing Council has a statutory duty to have regard to the need to promote public confidence in the criminal justice system when developing sentencing guidelines and monitoring their impact. The Council has interpreted this duty more widely as an obligation to take direct steps to promote public confidence in the criminal justice system and in sentencing.

The Council's communication activity is shaped around three strategic priorities: to support effective implementation of guidelines across the criminal justice system; to promote confidence in sentencing by improving awareness and understanding of sentencing, the sentencing guidelines and how they work among practitioners and the public (including victims, witnesses and offenders); and to reinforce the reputation of the Sentencing Council and sentencing guidelines.

The Council supports effective implementation of guidelines by ensuring that judges, magistrates and practitioners are aware of new guidelines and consultations. It works with the mainstream, specialist and trade media to reach our audiences, inform the public about guidelines and explain how the Council works.

We publicise guideline launches and consultations, submit articles on a range of sentencing- and guideline-related topics, and will be launching a new, more user-friendly website. The

Council has also identified a number of priority organisations who have the potential to help us reach our audiences and promote public understanding of sentencing.

The area of public education is one where the Council is aware that some feel a shift in resources could be justified to allow us to achieve more. We have identified young people of secondary-school age as a priority audience for this. Our aim is to equip them with a knowledge and understanding of sentencing that will improve their confidence in the fairness of the criminal justice system. We have developed a teaching pack for schools to deliver as part of the citizenship curriculum and will contribute to teaching activities run by our partners in the criminal justice system who have a greater reach into schools.

We are seeking views on:

- **Which areas of activity do you think could achieve most in promoting public confidence, and why?**
- **Are there any areas of existing activity in relation to promoting public confidence that you think the Council should do more of or less of, and why?**
- **Are there any other avenues we could use to inform the public about the Council and the guidelines?**

Costs and effectiveness of sentencing

The Council has a statutory duty to have regard to the cost of different sentences and their relative effectiveness in preventing reoffending when preparing or revising sentencing guidelines and may also promote awareness of such matters.

The 'effectiveness' of sentencing can be considered more broadly than simply the way in which it is effective in terms of reducing reoffending. However, given that the statute gives particular weight to this aspect, the Council has primarily chosen to focus on this.

The Council's approach in recent years has been to produce an annual internal document outlining the latest research evidence in this area regarding reoffending. This is not intended to directly influence the Council's deliberations on any individual guideline, but to supplement members' significant existing expertise and experience in sentencing matters. We have considered this to be a practical and proportionate way of ensuring a shared understanding of the current literature.

On costs, the Council has generally chosen not to address costs or cost-effectiveness in resource assessments explicitly beyond the inclusion of the costs of correctional resources.

This is because in any individual case, the cost of a sentence should not be considered when deciding upon the most appropriate disposal. In addition, meaningful analysis and

interpretation of the data in relation to cost-effectiveness is difficult, and the resources required to do even a small amount of work in this area would be significant. Further work would also require the Council to take a view on how it defines 'effective' within this context and we are aware different definitions exist.

The Council is therefore seeking views on the following:

- **Do you have any views on the way the Council has addressed the duty to have regard to the costs of sentences and their relative effectiveness in preventing reoffending?**
- **Do you have any view on other aspects more broadly in terms of the 'effectiveness' of sentencing that the Council might want to consider and if so, how we would go about doing this? To what extent should any further work be prioritised above other areas of the Council's activities?**
- **Should the Council carry out additional research in the area of effectiveness of reducing reoffending? What should the additional research priorities be?**

How we work

Before producing a sentencing guideline, the Council is required by legislation to consult on a draft version of it and must seek the views of the Lord Chancellor and the Justice Select Committee. In practice, we routinely consult widely, particularly among sentencers and those who work in criminal justice. We generally consult for a period of 12 weeks.

Our consultations are published on our website as a pdf document with links to draft digital guidelines and are also available as an online questionnaire on the [Ministry of Justice consultation hub](#). We regularly receive consultation responses from individuals or groups including those representing sentencers, the legal professions, prosecutors, victims, academics and charities working in criminal justice, as well as those with a particular interest in the subject matter of individual consultations.

The Council brings its guidelines into force on four set dates in the year: 1 January, 1 April, 1 July and 1 October. This gives greater predictability to the process and should help to ensure that in-force dates are not missed by users. We have also historically published definitive guidelines three months before the in-force date to allow time for the physical distribution of guidelines and for familiarisation and training. Now that guidelines are accessed digitally, this could be shortened.

While guidelines are designed to stand alone and should not require additional information, we have at times published case studies on new guidelines or videos on how to navigate

them. Judicial training on guidelines is the province of the Judicial College, and interpretation of guidelines is a matter for the Court of Appeal. Nevertheless, we are also interested to hear whether we could develop more material to assist guideline users.

We invite views on the following:

- **Do you have views about how the Council can improve the consultation process for regular respondents?**
- **Do you have views about whether there are people or organisations we should be reaching with our consultations but are not? If so, please suggest what we can do to reach them.**
- **Do you have views about how the Council should time the publication and coming into force of the guidelines?**
- **Is it the role of the Council to provide more assistance on the use and interpretation of guidelines? If so, please explain how you think this could best be achieved.**

Introduction

1. This year marks the 10-year anniversary of the Sentencing Council for England and Wales. The Council was set up as an independent non-departmental public body by the Coroners and Justice Act 2009 (C&JA 2009).

History

2. Since the 1980s, the Court of Appeal has made increasing use of its power to issue guideline judgments that give guidance on sentencing. However, the Court was originally limited in its scope for giving such general guidance in the context of deciding a specific appeal. Guideline judgments therefore remained relatively rare, and covered few offences. As a result, the Sentencing Advisory Panel (SAP) was established by the Crime and Disorder Act 1998 to carry out research and make evidence-based recommendations for sentencing guidelines to the Court of Appeal. The Court of Appeal was not required to accept those recommendations, although it did in most cases, albeit with modifications.
3. In 2001, the Halliday report recommended that to move towards a system of more comprehensive guidelines, new structures would be needed. As a result, the Criminal Justice Act 2003 established the Sentencing Guidelines Council (SGC), which then became the body tasked with producing sentencing guidelines based on advice and recommendations from the SAP. This marked the first time that guidelines were produced by a body that was not solely comprised of judges. Courts were required to have regard to the SGC guidelines but not obliged to follow them.
4. Debate continued as to the best model for producing guidelines. Lord Carter was commissioned by the government to carry out a review of prisons, and his report, published in December 2007, recommended the establishment of a formal sentencing commission with an explicit role in managing the prison population similar to the approach taken in some US states. A working group chaired by Lord Justice Gage considered this proposal. It concluded that such an approach was too narrow and made its own recommendations.
5. The Gage recommendations were given effect by the C&JA 2009. The Act created the current Sentencing Council, which replaced the two previous bodies. Courts are now required to follow the guidelines (as opposed to 'have regard' to them) unless, in an individual case, to do so would be contrary to the interests of justice.

The Council today

6. The President of the Council is the Lord Chief Justice, and the Chairman is a Lord or Lady Justice of Appeal, currently Lord Justice Holroyde. The Council consists of 14 members: eight judicial members, drawn from the judiciary and lay magistracy, covering the full range of criminal courts; and six non-judicial members with experience in a range of criminal justice matters.
7. The Council is supported by an office whose budget is funded by the Ministry of Justice. Since the Council was created in April 2010, we have received a small budget and, along with many other public sector bodies, have seen this reduce over time. This has meant that the Council has had to make difficult choices about which areas of work to prioritise and how best to deliver our statutory responsibilities. At the time of writing, our budget for the financial year 2019/20 was in the region of £1.5 million, the majority of which (approximately £1.2 million) related to staff and Council member costs. The Council's full complement of staff is only 17 and comprises a multi-disciplinary team of lawyers, policy officials, analysts, communication specialists and administrative support.
8. The legislation sets out a number of duties that the Council must fulfil and a range of functions that we may carry out. It also places some constraints or requirements on how those functions are to be exercised. The Council's various statutory duties, matters to which it must have regard and functions it may choose to carry out, are described and considered in detail throughout the main body of this consultation and at Annex B.
9. In addition, given the significant judicial membership, which includes two Court of Appeal judges and two High Court judges, it is difficult for the Council to take positions or give views on matters that might properly be considered as policy matters outside our statutory remit or matters of political sensitivity.

Aims and objectives

10. The Council's main overarching objectives are to:
 - promote a clear, fair and consistent approach to sentencing;
 - produce analysis and research on sentencing; and
 - work to improve public confidence in sentencing.
11. In 2015, as the pressures on our budget were becoming apparent, the Council took stock of our statutory duties and reiterated our commitment to focusing resources

primarily on sentencing guidelines. We gave ourselves a set of overarching objectives to achieve by 2020. These were to have produced sentencing guidelines covering all the most frequently sentenced offences, and to have replaced all of our predecessor body's guidelines by the year of our 10th anniversary. The Council agreed that this overarching ambition should be our main focus until 2020. Each year we publish a rolling, three-year workplan outlining our progress towards that ambition and any other pressing additional matters that may arise.

Looking forward

12. As we reach our 10th year, the Council is satisfied that we have largely delivered what we initially set out to achieve by 2020, and now seems a natural point at which to take stock of our progress and success and look forward to what the Council's priorities should be for the next five to 10 years. We are also aware that there is increasing debate within the criminal justice sector about what the Council's role and focus should be.
13. The Council began thinking about long-term priorities two years ago and commissioned Professor Sir Anthony Bottoms of the University of Cambridge, along with Dr Jo Parsons, to carry out an independent review of the Council and how we had fulfilled our statutory functions to date. The Council is very grateful for this work, which has already informed some of our early choices around our work programme and our approach to drafting guidelines. Some of the other recommendations in the report would require choices to be made that could have an impact on the Council's traditional focus on guideline production.
14. More recently, the Ministry of Justice published a Tailored Review of the Council, in line with the Cabinet Office Code of Practice relating to public bodies. The review reiterated the government's view that there was an ongoing need for a body such as the Council and that the statutory functions did not need to be changed. However, the review made a number of more practical recommendations, which the Council is taking forward. Finally, the Justice Select Committee suggested, in the report of its Inquiry into the Prison Population 2022, that it may consider initiating an inquiry into the Sentencing Council's future role.
15. For all of these reasons, the Council believes that now is the right time to consider our role and consult widely to seek the views of all those with an interest in our work on what the Council's future objectives and priorities should be.

The Council's approach

16. In considering the future direction of the Council, we have considered:
- the statutory duties set out in the C&JA 2009;
 - the independent review of the Council, conducted by Professor Sir Anthony Bottoms;¹
 - the report from a Tailored Review undertaken by the Ministry of Justice;² and
 - commentaries published on the Council's work throughout the last 10 years (for example, from academics or interest groups).
17. In the autumn of 2019, Sentencing Council officials also undertook a series of informal discussions with internal and external partners in the criminal justice system and those with an interest in the system to discuss a range of issues that could feed into this consultation. These issues included the Council's achievements over the first 10 years, the way in which we have interpreted and addressed our statutory duties, where gaps may exist in our work, and suggestions for future areas of work.
18. The outcomes of these informal discussions have been fed back anonymously to the Council and have helped shaped members' thinking and the proposals that are contained within this consultation document.

Future priorities: outline of the proposals

19. The following sections of this consultation outline the key areas and issues that have emerged from our early work to consider the Council's priorities. These sections have been split into six broad areas:
- Overarching general issues
 - Developing and revising sentencing guidelines
 - Analysis and research
 - Promoting public confidence
 - Costs and effectiveness in sentencing
 - How we work

¹ A Report on Research to Advise on how the Sentencing Council can best Exercise its Statutory Functions: <https://www.sentencingcouncil.org.uk/news/item/council-publishes-independent-review/>

² Ministry of Justice (2019) Tailored Review of the Sentencing Council: <https://www.sentencingcouncil.org.uk/publications/item/tailored-review-of-the-sentencing-council-2019/>

20. These sections should be read in conjunction with the information in Annex B, which outlines how the Council has, to date, addressed the statutory duties. The sections also contain a number of consultation questions (see Annex A for a full list of these questions).
21. Responses to these questions, and any change of emphasis, strengthening of analytical support or additional areas that the Council may wish to pursue as a result of ideas put forward through this consultation, will need to be considered in the light of the resources available to the Council. As outlined above, the Council has a limited budget and is supported by a small team.
22. If the Council did want to rebalance priorities, this may necessitate slowing down the rate of guideline development and revision to release officials to undertake other work.
23. The Council will also explore whether there are potential sources of additional funding to which we can apply in order to resource any extra work that might flow from the consultation. Regarding analysis and research in particular, we have also asked a specific question on whether consultees feel there are any areas of work that could be undertaken by an external organisation, either in full or in part.
24. Throughout the consultation we ask respondents when giving their views on what the Council should do to be as clear as possible as to how much of a priority they consider each activity (or potential activity) to be and why. This will enable the Council to give the fullest and most informed consideration to all the responses received.

General matters

25. The Council's creation in 2009 coincided with the start of a period of austerity in public finances, which saw its budget cut successively for a number of years (in line with most public bodies). For the past two years, the Council has seen its budget remain constant in real terms.
26. This has meant that the Council has had to choose which areas it must focus on. As outlined above, it has chosen to concentrate chiefly on duties relating to the development, testing and evaluation of sentencing guidelines. Without additional resources available, any significant change in emphasis or taking on additional areas of work would have an impact on the other areas of work that the Council currently undertakes. For example, it may necessitate a slowing down of the pace of guideline development and revision.
27. The production and revision of guidelines does indeed form a large part of the Council's statutory responsibilities. However, there are other areas that the Council

could choose to address more fully if there were a reduced emphasis on guidelines. For example, it has been argued that, having achieved its aim to produce guidelines for all the high volume offences, it could add more value in the future by focusing more on evaluative work or carrying out additional research on trends or practices in sentencing. Others argue strongly that the production of guidelines ought to remain the Council's primary function as this is where it can have the most practical value to the courts.

28. The Council is therefore seeking views on what consultees feel are the most important issues for the Council to consider when allocating its resources, and what activities it should prioritise.
29. The Council will continue to make the case for more funding and argue for what more it could do if more resources were available. If there were to be a strong view from respondents as to particular activities the Council should undertake – and a clear rationale of the benefits of doing so – this could form part of an evidence base to make the case for additional funding from the government. Similarly, we welcome views from respondents on any alternative funding sources that it would be appropriate to investigate.

Responding to this consultation

30. This consultation invites views on all aspects of the Council's work, and for this reason it is necessarily long and detailed. We recognise that not all respondents will want to answer all of the questions, and we invite you to select those areas of the consultation that are of interest to you.
31. Questions appear in the relevant sections of the document. At this stage, the Council invites comments on the following questions in relation to general matters. It may be helpful to bear these questions in mind while considering the rest of the consultation and to return to them at the end.

CONSULTATION QUESTIONS ON GENERAL MATTERS

Question 1: Is the Council right to continue to focus on the statutory duties that it has prioritised to date (broadly speaking: guideline development, monitoring and evaluation of guidelines, public confidence)? If not, what are your reasons for this?

Question 2: In particular, do you think the Council's current primary focus on guideline development and revision (including analysis and research

and communication activities to support guidelines) is correct and should continue? Please provide reasons.

Question 3: If you think the Council should focus more on other activities please outline those areas and the reasons why.

Question 4: Taking account of your answers above what do you think the balance should be between guidelines (and the work that supports them) and other activities that you have identified? Please outline your reasons.

Question 5: Are there other sources of funding or funding models that the Council should consider pursuing in order better to fulfil its statutory duties?

Question 6: Are there any other broad matters that you would like to raise, or comments you wish to make on the Council, that are not covered by your answers to any other questions?

Developing and revising sentencing guidelines

Background

32. Guidelines have always been at the core of the Council's work. In the first 10 years of the Council's existence we have produced 27 sets of definitive guidelines encompassing 145 separate guidelines that cover 227 offences and eight overarching topics. A full list of these and the guidelines currently under development is provided at Annex C.
33. Courts in England and Wales must follow relevant guidelines when sentencing (unless it would be contrary to the interests of justice to do so) and it follows that guidelines are referred to thousands of times every week by sentencers, prosecutors, defence representatives, probation officers and other court users. Some guidelines are used more frequently than others. The most commonly used ones are those that apply in magistrates' courts.
34. The Council has a statutory duty to produce guidelines on totality, allocation and reductions in sentence for a guilty plea. The Council has met those duties. In addition, our aim has been to replace all the sentencing guidelines produced by our predecessor body, the SGC, and to ensure that all of the most commonly sentenced offences are covered by a sentencing guideline. We are close to achieving this aim, with all such guidelines either in force or under active development (with the exception of some driving offences – an area in which there may be new legislation).
35. As well as developing new guidelines or replacements for SGC guidelines, we have also revised some of the Council's own guidelines. These revisions have either been to take account of changes to legislation (for example *Dangerous dog offences*) or in response to an assessment (*Assault offences*) or both (*Drug offences*). In addition to major revisions of existing guidelines, the Council also makes smaller revisions and updates in response to legislative changes (*Terrorism offences*) or feedback from users (*Breach of a community order*).
36. When developing guidelines, the Council is required by section 120(11) of the C&JA 2009 to have regard to the following matters:
 - (a) the sentences imposed by courts in England and Wales for offences;
 - (b) the need to promote consistency in sentencing;
 - (c) the impact of sentencing decisions on victims of offences;
 - (d) the need to promote public confidence in the criminal justice system;

- (e) the cost of different sentences and their relative effectiveness in preventing reoffending; and
 - (f) the results of the Council's monitoring of the operation and effect of guidelines.
37. These matters are covered to an extent in this section, but a fuller discussion on how we meet the duties under (a), (d), (e) and (f) can be found in later sections.
38. The Council is supported by a small multi-disciplinary team, and much of the work of the team is directed towards the development, testing, launch and assessment of guidelines. Guidelines fulfil their primary purpose in promoting a consistent approach to sentencing but they also improve the transparency of the sentencing process, thus going some way towards meeting the duty to promote public confidence in the criminal justice system in the exercise of the Council's functions.
39. The development of guidelines is underpinned by evidence of current sentencing practice and other evidence (from statistical and social research) relating to the nature of the offending, characteristics of offenders and the effect on victims. The views of victims of crime, and the impact of sentencing upon them, are a key part of the Council's deliberations in developing guidelines, and one Council member is appointed as a person experienced in the promotion of the welfare of victims of crime. In addition, both before and during the consultation process, the Council seeks views from victims on the issues to be considered. For example, in developing the guideline on sentencing sexual offences, the Council commissioned research that explored the experiences and perceptions of victims/survivors and parents or guardians of victims of these offences.
40. In this way we fulfil the Council's duties to have regard to sentences imposed in courts in England and Wales and the impact of sentencing decisions on victims.
41. Additionally, the assessment of the resource implications of guidelines is integral to the development of guidelines. We publish resource assessments for our draft guidelines at consultation stage and for the definitive guidelines.
42. The Council's provisional view is that it will continue to focus on the development of guidelines (whether new or revised) and the associated analysis, research and communication work that supports this because this is where we believe the Council can add most value. We are seeking views on the extent to which the Council should devote some of its limited resources to other functions. In recent years, the Council has had about eight guideline projects under development at any one time. The exact

number will vary depending on the size and complexity of each project. If a decision is taken to devote more resources to other functions, the number of guidelines being worked on at any time would need to be reduced, slowing down the pace of guideline production.

Consideration

43. Within the resources available for guideline production, the Council has to consider which guidelines should be worked on and how they should be prioritised. The Council has a full schedule of work until the end of 2020. Looking further ahead, we would like to hear views on how we should balance the relationship between three sets of competing priorities when looking at our future work schedule:
1. New guidelines/revisions of existing guidelines
 2. High volume offences/niche offences
 3. Offence specific guidelines/overarching guidelines.

New guidelines/revisions of existing guidelines

44. Although the Council has produced guidelines for the most commonly sentenced offences, we receive many requests for additional guidelines.
45. It generally takes at least two years for the Council to research, develop, test, consult on, revise and issue a guideline. In view of this timescale and the range of offences that are not yet covered, the Council issued the *General* guideline for courts to use when sentencing offences for which there is no offence specific guideline. This came into force on 1 October 2019.
46. When considering the development of new guidelines, decisions on the scope of the project are based on the assessment of a range of views and evidence. Projects often expand once the views of sentencers and other interested groups have been taken into account.
47. There is likely to be a demand for sentencing guidelines for any new criminal offences that are created in future. The Council will generally not commence work on a guideline for a newly created offence until there is a body of evidence to inform its development. In the meantime there may be a case for issuing interim guidance (as has been the case for the offence of [‘drug driving’](#)).
48. There are various reasons why the Council may decide to revise an existing Sentencing Council guideline:

- Changes to legislation render an existing guideline outdated to a greater or lesser extent. This was the case, for example, with the *Dangerous dog offences* guideline, which was extensively revised in 2016, and with the *Terrorism offences* guideline, which is currently being considered for revision.
 - Evaluations or reviews of guidelines disclose that there are issues such as inconsistency of interpretation, types of cases that are not covered by the guideline or evidence that the guideline has had an unanticipated effect on sentencing practice. The Council is revising the *Assault offences* guideline to address issues raised in the [assessment of that guideline](#).
 - Changes in offending behaviour or changes in the understanding of the effect of offending on victims. The current revision of the *Drug offences* guideline is driven in part by changes in the types of drugs being misused, the way in which they are bought and sold and the additional ways in which vulnerable people are being exploited in the pursuit of profit from drug production and trafficking.
49. One feature of revising guidelines is that there is likely to be more data and research available to inform the revised guideline than there is for a 'new' guideline. This is because there will be a wealth of evidence from the assessment of the guideline and a clearer idea of the difference in sentencing practice before and after its introduction. However, analysing, interpreting and employing that evidence in the development of a revised guideline is a detailed and time-consuming process. Therefore, revising a guideline may take as much time as developing a new guideline, if not more.
50. It may not always be necessary to carry out a wholesale revision of a suite of guidelines; smaller changes to individual guidelines could be all that is required. However, even where the changes proposed retain the basic structure of a guideline and make relatively minor adjustments to the content, the Council will still have committed time and resources to a detailed consideration of all the evidence and options for change.
51. Additionally, it should be noted that the revision of existing guidelines often involves the development of new ones. A case in point is the *Drug offences* guideline: the current revision also includes proposals to add four new guidelines for offences created since the introduction of the original guidelines.
52. A list of guideline assessments published to date is provided at Annex C. Of those for which a revision is not already underway, the Council considers that there is sufficient evidence to justify revising the *Burglary offences* guideline and we will commence this as soon as time allows.

53. There may be an argument for making adjustments to existing guidelines that fall short of a full review. Each case would have to be considered on its merits but, where there is an acknowledged difficulty with an aspect of guideline, the Council could make a limited modification. We have a [policy for making changes to existing guidelines](#) where an error is discovered or external changes affect the guideline, which includes consulting on any substantive changes that were not contemplated when the guideline was developed. This policy could be extended to cover situations where interested parties make a case to improve an existing guideline short of a full revision.

High volume offences/niche offences

54. The Council has developed (or is in the process of developing) guidelines for most of the highest volume offences, so our choice will increasingly be between revising existing high volume offence guidelines and developing new guidelines for lower volume offences.
55. The rationale for concentrating on high volume offences is that this is where there is most demand and where guidelines can have most impact. The rationale for producing guidelines for low volume offences is that sentencers often need most help when sentencing unfamiliar offences. This can particularly be the case for magistrates sentencing low level offences where there will be no case law to assist and where an individual sentencer may have never encountered the offence before. In this way, guidelines for 'niche' offences can have a significant impact. Developing guidelines for lower volume but high-profile offences can also have a positive impact in terms of public confidence in sentencing because it demonstrates that the Council is responsive to public concerns about the problems caused by a particular area of offending.
56. The *General* guideline was developed in consultation with many of the organisations that have requested sentencing guidelines for less common offences. While the *General* guideline has been welcomed by these organisations, there is still a demand for specific new guidelines for a wide range of offences, many of which are prosecuted by authorities other than the Crown Prosecution Service. Although very varied, many of the offences present similar issues in terms of being committed for financial gain (or for the avoidance of expenditure).
57. The *General* guideline provides sentencers with a structure for sentencing and contains guidance on, for example, ensuring that financial penalties remove any gain derived through the commission of the offence. It is too early to make any assessment of how the *General* guideline is working in practice.

58. There are difficulties in developing guidelines for less frequently sentenced offences. First, there is inevitably less evidence of current sentencing practice; second, there are fewer examples of how the offence is committed and by whom to inform the development of the guideline; and third, the Council is less likely to have relevant knowledge and experience of the features of such offences and current sentencing of them. The Council can counter these difficulties by engaging with interested parties and experts, and this has greatly assisted us in the past.

Offence specific guidelines/overarching guidelines

59. The bulk of the Council's guideline output is in the form of offence specific guidelines. Alongside these the Council has produced eight overarching guidelines. There is no common theme to these guidelines other than that they apply across different offences.
60. The Council has received requests for overarching guidelines on a number of topics including: sentencing primary carers, sentencing women, offences committed in custody and sentencing young adults. The Council has addressed these requests to an extent by adding expanded explanations to aggravating and mitigating factors in all offence specific guidelines, by adding links in all the guidelines to the [Equal Treatment Bench Book](#) and by producing the *General* guideline. These expanded explanations include information and guidance on a number of factors that are commonly relevant to sentencing decisions but, while these were largely welcomed, there are those who think that the Council should produce more comprehensive guidance in the form of an overarching guideline on such topics.
61. It is too early to have any indication of the impact of the expanded explanations in offence specific guidelines. It may be that concise embedded guidance can have more impact than longer-form separate guidelines in some cases. In others, such as guidance on sentencing of offenders with mental health conditions or disorders, the Council has determined that the breadth of the issues raised and the technical issues, both in terms of the medical conditions and the legal considerations, meant that a comprehensive overarching guideline was preferable.
62. One difficulty that the Council has faced with overarching guidelines is ensuring that they are a practical tool that will be made use of and followed as part of the sentencing process. With the advent of digital guidelines, it has been possible to link to overarching guidelines from within offence specific guidelines, which makes them more visible and accessible. Nevertheless, there is a balance to be struck between ensuring that overarching guidelines provide comprehensive guidance and ensuring

that they are in a format that lends itself to operational use. The two main criticisms from users across all guidelines are that they should contain more explanation and detail and, conversely, they are too long and complicated for use in a busy court.

63. The Council welcomes views on where we could offer the most value in providing overarching guidelines. The options include:
- developing separate guidelines for particular topics, which can be accessed by links from the digital offence specific guidelines; and
 - embedding shorter guidance in offence specific guidelines (as has been done with the expanded explanations).
64. There may be other ways in which overarching themes can be reflected in sentencing guidelines. The advent of digital guidelines provides a more flexible way of delivering and modifying guidelines and the Council is open to suggestions as to how we can take advantage of this flexibility.

Criteria for scheduling guidelines

65. The Council has **existing** criteria for scheduling the development of guidelines (whether offence specific or overarching):
- The Lord Chancellor or the Court of Appeal formally requests the review of sentencing for a particular offence, particular category of offence or particular category of offender, and the production of a guideline.
 - New legislation requires supporting sentencing guidelines.
 - Guidelines issued by the SGC require conversion into the Council's step-by-step approach to sentencing, or current guidelines if they are out of date or incomplete.
 - A substantial body of interested parties request a guideline to be issued for a particular area of sentencing.
 - Sentencing data suggest that there may be inconsistency in sentencing for a particular offence, category of offence or category of offender.
 - Evidence suggests that the guideline would have a significant effect on sentencing practice: for example, the potential range of available sentences is wide and/or the number of offences sentenced is significant.
 - The resource required to produce a guideline and other work pressures.

66. The Council is seeking views on what criteria should be used **in future** for scheduling the development of new or revised guidelines. Possible criteria are:
- The Lord Chancellor or the Court of Appeal formally requests the review of sentencing for a particular offence, category of offence or category of offender, and the production or revision of a guideline.
 - A substantial body of interested parties request a guideline to be issued or revised for a particular area of sentencing and there is evidence to suggest that a guideline would have a significant impact on sentencing.
 - Existing guideline(s) have become significantly out of date, or new guidelines may be required because of new legislation, amendments to legislation or other external factors.
 - Evidence indicates that existing guideline(s) have had a problematic, unintended impact on sentencing severity.
 - Evidence indicates that there is currently inconsistency in the sentencing of an offence or group of offences.
67. All the above criteria would be subject to the Council having the resources required to produce the guideline(s).

CONSULTATION QUESTIONS RELATING TO DEVELOPING AND REVISING SENTENCING GUIDELINES

Question 7: What are your views on the extent to which the Council, through the development of sentencing guidelines, meets the duties to have regard to:

- **the need to promote consistency in sentencing;**
- **the impact of sentencing decisions on victims; and**
- **the need to promote public confidence in the criminal justice system?**

Please suggest any ways in which you think this could be improved.

Question 8: What are your views on the suggested criteria (in paragraph 66 above) for prioritising the development or review of guidelines? Please suggest any additional criteria that you think should be considered or criteria you think should be removed.

- Question 9:** Should the Council expand the policy for making changes to existing guidelines (short of a full revision) as outlined in paragraph 53 above? Please suggest what situations should be covered by such a policy.
- Question 10:** Can you suggest practical ways in which the flexibility afforded by delivering guidelines in a digital format could be used by the Council to improve guidelines?
- Question 11:** Is there a guideline for a particular offence or set of offences that the Council should develop or revise as a priority? Please give reasons.
- Question 12:** Is there a guideline for a particular overarching issue that the Council should prioritise? Please give reasons and explain how best you think this could be addressed.

Analysis and research

Background

68. Analysis and research are integral to ensuring the Council develops guidelines that meet the aims and objectives of the Council. Analytical work contributes to all stages of the guideline development process and work to fulfil the Council's statutory duties (see Annex B for an outline of the duties and examples of how we have fulfilled these).

The Council draws on analysis and research in the following ways:

- To help determine which guidelines to develop: one of the criteria for deciding whether to develop a guideline is whether the evidence – either formal data or information and experience – suggests there is a problem with sentencing. Therefore, if analytical work suggested that there was a concern over the sentences for certain types of offenders, or a known inconsistency in sentencing a particular offence, the Council may prioritise this area for a new (or revised) guideline.
- To assist with development of the guidelines: analytical work is vital in identifying relevant factors, devising sentencing ranges for offences, determining any potential behavioural implications of a guideline, assessing the likely resource implications of a guideline, and looking at other potential impacts.
- To understand user views on draft guidelines: it is important to establish whether a new or revised guideline will be interpreted as expected by users and whether it will have legitimacy among its users.
- To monitor and evaluate a guideline after it is in force: it is particularly important to assess whether a guideline is having an impact on sentencing outcomes or is giving rise to any implementation issues. If issues are observed, we undertake work to ascertain whether it is possible to determine the likely reasons for these.

69. In addition, analysis and research contribute to other, more overarching Council work, for example measuring issues related to confidence in sentencing and the criminal justice system, and understanding work in the area of effectiveness in sentencing.

Data sources and approaches

70. The Council's analytical team draws upon a range of different data sources. Statistics are drawn from the Ministry of Justice's Court Proceedings Database, which permits a descriptive analysis of sentencing trends over time (for example, volumes, average custodial sentence lengths and disposals).

71. These data can also be used to conduct time series analysis to look at sentencing trends after a guideline is in force and to try to isolate the extent to which any observations may be attributable to the guideline or to other issues (such as the case mix coming before the courts). If other data are needed, we try to source this if possible (for example, data provided by the Crown Prosecution Service and the Environment Agency).
72. We also undertake our own research to support and inform our work. Between 1 October 2010 and 31 March 2015, we ran the Crown Court Sentencing Survey (CCSS)³ to collect information on sentencing reasons, as well as guilty pleas and sentence outcomes. We have now put in place other more targeted and bespoke data collections that collect similar data in both the Crown Court and magistrates' courts when required. These research exercises also help to overcome the fact that the usefulness of the CCSS data diminishes over time. Analysis of data from these collections can help us explore what might be influencing outcomes.
73. In addition to the court data collections, we also run smaller surveys of sentencers when required to help us understand how they approach various issues (for example, when developing the guidelines on bladed articles and offensive weapons, we asked sentencers how they perceived the relative seriousness of different types of weapons and what they might want from a new guideline).
74. The Council also undertakes a large amount of qualitative research, primarily with sentencers but also with legal professionals, victims, offenders and the general public. We use interviews and focus groups to establish whether there are issues around implementing and interpreting guidelines, to understand views of sentencing and guidelines and to explore specific issues to help inform our approaches to a new guideline. For example, when developing the *Fraud offences* guideline, the Council conducted focus groups with victims of online fraud to establish the types of impact these offences have to help inform the model of harm.
75. We also conduct qualitative work to help us interpret quantitative data findings and use content analyses of transcripts of Crown Court sentencing remarks to enable us to examine the factors sentencers consider. This work helps inform both guideline development and evaluation of guidelines.

³ Between 1 October 2010 and 31 March 2015, the Sentencing Council conducted a data collection exercise called the Crown Court Sentencing Survey (CCSS). The CCSS recorded details on the factors taken into account by the judge when determining the appropriate sentence for an offender (such as harm and culpability factors, and aggravating and mitigating factors), and the final sentence given. For further information see <https://www.sentencingcouncil.org.uk/analysis-and-research/crown-court-sentencing-survey/>

Consideration

76. There are several analytical areas to which the Council could consider devoting more resources if these were to be regarded as priority areas or if more resources were to become available (for example, through reprioritising the current allocation of work or an increase in staffing). It may also be possible for the Council to take some of these areas forward through more collaborative work with academics and external organisations.
77. The following sections outline these areas as well as some of the issues that exist in some areas. Consideration of these may indicate that further work is needed in the future.

Resource assessments

78. As outlined in Annex B, for both the draft guidelines and the definitive guidelines, the Council must prepare an assessment of the resources required for the provision of prison places, probation services and youth justice services.
79. To date, many of these assessments have focused on impacts relating to the provision of prison places. This is because many of the offences covered by the Council's early guidelines are largely concerned with custodial sentences (for example, robbery, burglary and sexual offences) and, other than the youth guidelines for robbery, sexual offences and bladed articles/offensive weapons, all the guidelines apply to adults only.
80. In addition, for offences that are low volume or which have a lot of community sentences within their range, assessing the impacts on probation provision is more problematic. We rely heavily on data from Ministry of Justice to conduct our resource assessments and, while data on sentence outcomes are available, gaps exist.
81. For example, there are gaps in relation to the data available on requirements attached to community orders. There is also limited information on the relative seriousness of the offences coming before the courts. The lack of data on seriousness means that assumptions have to be made regarding the way in which offences would be distributed across the different harm and culpability categories in sentencing guidelines. There is also a more general problem with obtaining information on magistrates' courts sentencing (for example, no transcripts of sentencing remarks are available).
82. The Council undertakes data collection exercises to fill some of the gaps. These exercises replace the CCSS and, while they are not as comprehensive, they do enable data to be collected regarding magistrates' court sentencing practice. The Council is

also discussing with HMCTS what opportunities the roll-out of the Common Platform⁴ in courts from summer 2020 might offer. We are also talking to a range of agencies to establish what other data might be available.

83. Given the ongoing difficulties with obtaining the robust and comprehensive data to support this work, it will be important to ensure that we continue to devote sufficient time and resource to developing and improving data sources (or finding alternative sources if gaps exist in some areas). It may also be that more dedicated resource is needed in this area at points in the future (for example, if we find that some of our data needs cannot be met through liaison with other stakeholders or organisations or exploring a particular data source is more complicated than initially envisaged).

Monitoring and evaluating guidelines

84. The C&JA 2009 says that the Council must monitor the operation of guidelines, which should include examining:
- the frequency/extent to which courts depart from sentencing guidelines;
 - factors that influence the sentencing imposed by the courts;
 - the effect of guidelines in promoting consistency; and
 - the effect of guidelines on the promotion of public confidence in the criminal justice system.
85. The Council undertakes analysis in all of these areas (see Annex B for more detail) but it has been suggested in discussions that, in future, the Council could broaden the range of impacts we monitor and evaluate and consider what we regard as ‘success’.
86. This consideration might include looking at impacts that go wider than the current focus on sentence severity and prison places and that could draw in some of the aims of sentencing contained in section 142 of the Criminal Justice Act 2003.⁵ It might also include looking more at implementation issues, in particular, at the move to digital guidelines, and considering whether that might be affecting sentencing behaviour (for example, undertaking qualitative work to test and assess *how* guidelines are used in

⁴ The Common Platform is a digital infrastructure system shared between the police, HMCTS and Crown Prosecution Service and accessible by participants across the criminal justice system.

⁵ The purposes of sentencing: Criminal Justice Act 2003 S142(1): “Any court dealing with an offender in respect of his offence must have regard to the following purposes of sentencing: (a) the punishment of offenders, (b) the reduction of crime (including its reduction by deterrence), (c) the reform and rehabilitation of offenders, (d) the protection of the public, and (e) the making of reparation by offenders to persons affected by their offences.

practice and whether any issues such as the format and structure of guidelines are influencing outcomes).

87. It has also been suggested that evaluations should cover not only the offence specific guidelines but also more of the overarching and cross-cutting guidelines. However, it is recognised that there could be difficulties in accessing data in this regard: for example, an offence may be recorded as a specific type of assault or harassment rather than as a case of domestic abuse.
88. There have also been calls for the Council to undertake more analysis on the impact of guidelines on specific groups. For example, research on different demographic groups of offenders such as women, Black, Asian and Minority Ethnic groups and victims. This would complement work the Council already undertakes as part of our obligations under the Public Sector Equality Duty (see Annex E for more information).
89. It should, however, be noted that the ability to look at more specific subgroups would require access to large and robust datasets (subsample sizes would need to be sufficiently large to permit meaningful analysis). All these suggestions take us back to the point previously made: that we may need to invest more resources to strengthen our analytical capability, which would include developing ways in which we could access more, and more robust, datasets.

Local area data

90. The C&JA 2009 states that the Council must publish, at intervals the Council considers appropriate, information regarding:
 - the sentencing practice of magistrates in relation to each local justice area; and
 - the practice of the Crown Court in relation to each location at which the Crown Court sits.
91. The Council has not to date felt it appropriate to gather and publish information of this nature. Sentencing guidelines require courts to follow a structured sentencing process that should be the same throughout England and Wales. Interpreting data produced on a local level would be potentially misleading if the analysis were not able to control for other factors that may have an influence, for example, the type of case load, socio-economic status of the population in the area, and the type of area (for example, urban vs rural). To control for these factors, we would need to link to data from other organisations, which would not only be difficult but also extremely resource intensive.
92. For all these reasons, the Council does not currently consider undertaking work in this area to be a high priority. However, we would welcome views on the value of doing

work of this kind and especially, given the Council's limited resources, its value in relation to other priorities.

Sentencing and non-sentencing factors reports

93. As part of our Annual Report, the Council must produce a sentencing factors report and non-sentencing factors report.
94. The sentencing factors report should contain an assessment of the effect that any changes in sentencing practice is having on the resources required for the provision of prison places, probation services and youth justice services.
95. The non-sentencing factors report should cover which non-sentencing factors are having, or are likely to have, a significant quantitative effect on resources. These factors include prison recall, breach of orders, patterns of re-offending, changes to early release provisions, prison recall and remand issues.
96. While it has been possible to produce a sentencing factors report, the production of a non-sentencing factors report has posed problems for the Council. In some areas the data are lacking. In addition, even if all the data were available, the work is resource intensive in the context of the Council's other priorities and the size of the analytical team. The Council, therefore, feels that producing a report signposting the relevant data sources is a proportionate approach to fulfilling this duty. However, we welcome views on the value of doing this work and especially, given the Council's limited resources, its value in relation to other priorities.

CONSULTATION QUESTIONS RELATING TO THE COUNCIL'S ANALYSIS AND RESEARCH WORK

Question 13: Are there any ways in which the technical aspects of the Council's analytical work could be improved? If so, please state what these might be (for example, improving the data sources we draw on or the time we give to accessing different types of data). Please be as specific as possible.

Question 14: Are there any ways in which the focus of the Council's analytical work could be improved? If so, please state what these might be (for example, broadening out the types of impacts we evaluate – including more in relation to specific demographic groups, focusing more on assessing consistency in sentencing, or exploring the ways in which the guidelines are used in practice). Please be as specific as possible.

Question 15: Do you feel that the Council has prioritised, either too highly or insufficiently, any of our statutory duties that specifically relate to analytical work? If so, please state which ones and give your reasons.

Question 16: Are there any other areas that you feel the Council should be considering as part of the programme of analytical work? If so, please state what these are and give your reasons.

Question 17: Which areas of analytical work do you feel the Council should make the highest priority? Are there any areas that you feel are so important that they warrant slowing down the pace of guideline development/ revision? Please state what these areas are and give your reasons.

Question 18: Are there any areas of work that you feel would be more suitable for an academic institution or external organisation to undertake? If so, please state what these are and give your reasons.

Promoting public confidence

97. The Sentencing Council has a statutory duty to have regard to the need to promote public confidence in the criminal justice system when developing the sentencing guidelines and monitoring their impact (see Annex B for more details).
98. The Council has interpreted this duty more widely as an obligation to take direct steps to promote public confidence in the criminal justice system, and sentencing in particular. This is an obligation we share with many of our partners across the criminal justice system.
99. In 2019 the Council commissioned research to consider what drives [public confidence in the criminal justice system](#).⁶ One of the findings of this research was that for most members of the public surveyed (76 per cent), knowing that the sentencing guidelines exist improves their confidence of fairness of sentencing at least a little. The principal aim of the Council's external communication activity is to improve people's knowledge and understanding of sentencing so that the public as a whole has confidence that the approach taken by the courts to sentencing offenders is fair and consistent.
100. The research also suggests that, as well as having an awareness of sentencing guidelines, gaining knowledge about sentencing and the criminal justice system through involvement with the criminal courts positively shapes people's confidence in the effectiveness and fairness of the system.
101. The Council is firmly of the view that victims and members of the public should be able to acquire a level of understanding of the sentencing process that allows them to make an informed and fair assessment of sentencing, both in cases in which they are involved and in high-profile cases covered by the media.
102. This view is very much in line with the government's Public Legal Education vision, that building legal capability throughout society will allow the public to feel confident in the rule of law, in our legal justice system and that the principle of equality before the law is being upheld.⁷
103. The Communication team also supports the effective implementation of guidelines by ensuring that judges, magistrates and criminal justice practitioners are aware of new

⁶ Sentencing Council (2019) Public Confidence in Sentencing and the Criminal Justice System: <https://www.sentencingcouncil.org.uk/publications/item/public-confidence-in-sentencing-and-the-criminal-justice-system/>

⁷ Attorney General's Office (2018), A Ten Year Vision for Public Legal Education: <https://www.lawworks.org.uk/sites/default/files/files/10YearVisionForPLE-web.pdf>

guidelines and consultations, have confidence in the sentencing process the guidelines promote and trust in the expertise and legitimacy of the Council.

Confidence and communication strategy and actions

104. To achieve these aims, the communication team shapes its work around three strategic priorities. These are to:

- support effective implementation of guidelines across the criminal justice system;
- promote confidence in sentencing by improving awareness and understanding of sentencing, the sentencing guidelines and how they work among practitioners and the public, including victims, witnesses and offenders; and
- reinforce the reputation of the Sentencing Council and sentencing guidelines across the criminal justice system, government, the public sector and academia, and among the wider public.

Media work

105. The Council works with the mainstream, specialist and trade media, both print and broadcast, to reach our audiences. We publicise guideline launches and consultations and submit articles on a range of sentencing-related and guideline-related topics. The aim of our media work is to inform the public about the sentencing guidelines and how they work to achieve consistency and fairness in sentencing, as well as to explain how the Council is constituted, how we work and how and to whom we are accountable.

Website

106. For many people, our website is their first encounter with the Sentencing Council. In our anniversary year, we are launching a new, more user-friendly website, aspects of which have been designed specifically to support our objective to promote confidence in sentencing among our public and other non-specialist audiences. The site aims to explain aspects of sentencing and debunk common sentencing myths in ways that are relevant, engaging and easily understood.

107. The new website has a dedicated news and blogging area designed to allow the Council to respond more readily to emerging sentencing-related issues and seize opportunities to inform and educate the public.

Social media

108. Twitter is widely used by legal practitioners, commentators and academics, and criminal justice reformers. The Council uses a corporate Twitter account to tell our

followers about consultations and guideline launches and monitor and respond to what is being said about sentencing and the Council.

109. With current resources, we are unable to do a great deal more with our existing Twitter account or engage in other social media activities.

Supporters and advocates

110. We know from the public confidence research conducted in 2019⁸ that gaining knowledge through involvement with the criminal justice system, especially with the police or courts, is a positive driver of people's confidence in sentencing. To build on this connection and make the best of our resources, the Council has identified a number of priority organisations who have the potential to help us reach our audiences, promote positive messages about sentencing and the Council and dispel common sentencing myths.
111. The Council focuses on equipping key players in the criminal justice system such as defence advocates, the witness service, Victim Support, the police and members of the probation service with information that enables them to help victims, witnesses, defendants and their families understand the guidelines and how sentencing works, and to manage their expectations.
112. To reinforce the reputation of the Council as transparent and to help to build trust in the Council as the expert body on sentencing, we have set ourselves a target of delivering at least 20 speaking engagements each year, seeking opportunities to give audiences an insight into how the Council develops guidelines and how the guidelines work to deliver consistency and fairness.

Young people

113. Other findings from the 2019 public confidence research tell us that young people between school-leaving age and early 30s have greater confidence in the effectiveness and fairness of the criminal justice system than older people, and most say that hearing about the sentencing guidelines increases their levels of confidence. However, young people are less likely than any other age group to know about the guidelines.⁹
114. To mitigate this lack of knowledge among the next generation of young adults, the Council has identified young people of secondary-school age as a priority audience.

⁸ Sentencing Council (2019) Public Confidence in Sentencing and the Criminal Justice System: <https://www.sentencingcouncil.org.uk/publications/item/public-confidence-in-sentencing-and-the-criminal-justice-system/>.

⁹ Ibid.

Our aim is to equip them with a knowledge and understanding of sentencing that will improve their confidence in the criminal justice system, whether they encounter it as victims, witnesses or defendants, and enable them to become critical readers of the media's reporting of sentencing.

115. We have developed a teaching pack for schools to deliver as part of the citizenship curriculum but, with our limited resources, we are unable routinely to visit schools or take part in teaching events. Instead, the Council aims to contribute to teaching activities such as mock trial competitions that are run by a number of our criminal justice system partners who have far greater reach into schools than the Council could achieve alone.

Prioritisation

116. The 2019 public confidence research commissioned by the Council and the annual Crime Survey for England and Wales show continuing low levels of public knowledge of, and confidence in, the criminal justice system.
117. The Crime Survey of 2017¹⁰ reported that only 33 per cent of the public were aware that the sentencing guidelines exist.
118. The 2019 public confidence research suggests that people who have been involved in a criminal court case or had contact with criminal justice agencies, particularly the police or Witness Support, are more likely than others to be aware of the guidelines. People from the highest socioeconomic group are more likely to be aware of the guidelines compared with those in other socioeconomic groups, and White adults are more likely to be aware than Black, Asian or Minority Ethnic adults. The analysis also found that there was less awareness of the guidelines among individuals who did not read short news articles.
119. The 2018 Crime Survey¹¹ has shown an increase in public confidence in the criminal justice system over the past 10 years. The Council's recent public confidence research found the public to be only slightly more confident than not confident in the effectiveness and fairness of the system. People over 55 were more likely than

¹⁰ ONS (2017) Crime Survey for England and Wales, Perceptions of the Criminal Justice System (CJS) and sentencing process:
<https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/adhoc/008222crimesurveyenglandandwalescsewperceptionsofthecriminaljusticesystemandthesentencingprocessselectedyearsandperiodsfromtheyearendingmarch2013totheyearendingseptember2017>

¹¹ ONS (2018) Crime Survey for England and Wales. Ad hoc release, 06.09.2018, Data on confidence in the criminal justice system, years ending March 2008 to March 2018:
<https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/adhoc/008964dataonconfidenceinthecriminaljusticesystemyearsendingmarch2008tomarch2018crimesurveyforenglandandwales>

younger people to say they were not confident in the system, as were people living in Wales and the North of England.

120. The 2019 research suggests that a range of factors might influence perceptions of sentencing among the general public but most predominant was the impact of media coverage.

121. There is a vast range of potential opportunities the Council could pursue, either alone or working with and through our criminal justice system partners, to do more to promote understanding and build public confidence, particularly among the audiences identified by the 2019 public confidence research and the Crime Survey. However, the Council currently has a very small communication team. Our initial conversations with stakeholders identified public education on sentencing as an area where people thought a shift in resources could be justified to allow the Council to achieve more, even if this were to be at the expense of producing sentencing guidelines.

CONSULTATION QUESTIONS RELATING TO THE COUNCIL'S WORK IN PROMOTING PUBLIC CONFIDENCE

If the Council were to give more priority to promoting public confidence:

Question 19: Which areas of activity do you think could achieve most in promoting public confidence, and why?

Question 20: Are there any areas of existing activity in relation to promoting public confidence that you think the Council should do more of or less of, and why?

Question 21: Are there any other avenues we could use to inform the public about the Council and the guidelines?

Costs and effectiveness of sentencing

122. The Council's duty in relation to this appears in two sections of the C&JA 2009: section 120, where the Council must have regard to the cost of different sentences and their relative effectiveness in preventing reoffending, and section 129, which covers promoting awareness of this.
123. Clearly the 'effectiveness' of sentencing can be considered more broadly than simply the way in which it is effective in terms of reducing reoffending. However, given that the statute gives particular weight to this aspect, the Council has primarily chosen to focus on this.
124. The legislation itself does not specify how the Council must have regard to this factor or provide for how to weigh it up alongside the other matters to which the Council is required to have regard, even though some of these may be in conflict.
125. The Council's approach to this in recent years has been to produce an annual internal document outlining the latest research evidence in this area regarding reoffending. The evidence review is not intended directly to influence the Council's deliberations on any individual guideline but to supplement Council members' significant existing expertise and experience in sentencing matters, which is brought to bear in discussions when considering the development of guidelines.
126. Given the Council's limited budget and, therefore, our research capability, we have considered this to be a practical and proportionate way to ensure that all Council members have a shared understanding of the current literature relating to sentencing and reoffending.
127. In addition, the Council, where applicable, already considers issues related to effectiveness in the guidelines. For example, in *Domestic burglary*, it states:
- Where the defendant is dependent on or has a propensity to misuse drugs and there is sufficient prospect of success, a community order with a drug rehabilitation requirement under section 209 of the Criminal Justice Act 2003 may be a proper alternative to a short or moderate custodial sentence.*
128. Similarly, the Council's *Imposition* guideline includes 'realistic prospect of rehabilitation' as one of the factors that indicate that it may be appropriate to suspend a custodial sentence.
129. On costs, the Council has generally chosen not to address costs or cost-effectiveness in resource assessments explicitly beyond the inclusion of the costs of correctional

resources. At one point, we included some limited additional information in the Annual Report, but have not done this recently.

130. There are two reasons why we have not pursued this area more fully. First, in any individual case, the cost of a sentence should not be considered when deciding upon the most appropriate disposal for that case. Second, meaningful analysis of the data in relation to cost-effectiveness is difficult and the resources required to do even a small amount of work in this area would be significant. For these reasons, whenever the Council has revisited this topic, for example following the recommendations of [Professor Bottoms' report](#),¹² we have not been convinced of the value of carrying out additional research in this area or of integrating any such information within guidelines themselves.
131. However, the Council has been criticised in the past for not having done more in relation to this. As a result, we have considered what more we might do in this particular area but have identified a number of practical difficulties.
132. Resources are clearly a significant constraint. Carrying out or commissioning additional research of our own would divert resources away from other areas of the Council's activities, notably the production and monitoring of guidelines.
133. Further work would require the Council to take a view on how it defines 'effective' within this context or what constitutes 'reoffending'. One reasonably tight definition of the latter, used in a number of studies is: proven reoffending within a year of release from custody, or the point of sentence for a community order. However, the Council is aware that there are arguments for alternative definitions within the academic community and, while there may be practical benefits for adopting a relatively common approach, the Council does not consider that there is a clear objective rationale for choosing that measure over another.
134. Finally, it is not obvious to what practical purpose carrying out further work in this area could be put. Our existing approach of bringing current research in this area to Council members' attention, and for them to have this in mind during their deliberations on individual guidelines, seems to work. This is, after all, just one of the matters to which the Council must have regard: current sentences, consistency, impact on victims and the need to promote public confidence are all other matters that the Council must consider and weigh up when producing guidelines (see Annex B, which outlines all the Council's duties).

¹² A Report on Research to Advise on how the Sentencing Council can best Exercise its Statutory Functions: <https://www.sentencingcouncil.org.uk/news/item/council-publishes-independent-review/>

135. We are also aware that there is a view from some quarters that that the Council should move beyond a strict focus on the statute – effectiveness of sentencing defined specifically in terms of reducing reoffending – and explore whether any work could be done in relation to the five purposes of sentencing more generally.¹³ Some also feel that the concept of ‘desistance’,¹⁴ about which much more is now known, should feature more heavily.
136. Bearing in mind the limitations to work in the area of effectiveness in sentencing outlined above, the Council is therefore seeking views as to what more we could do, either in terms of further research, or in the way that we currently have regard to this duty and the information we currently produce.

CONSULTATION QUESTIONS ON COSTS AND EFFECTIVENESS IN SENTENCING

Question 22: Do you have any views on the way the Council has addressed the duty to have regard to the costs of sentencing and their relative effectiveness in preventing reoffending?

Question 23: Do you have any view on other aspects more broadly in terms of the ‘effectiveness’ of sentencing that the Council might want to consider and if so, how we would go about doing this? To what extent should any further work be prioritised above other areas of the Council’s activities?

Question 24: Should the Council carry out additional research in the area of effectiveness of reducing reoffending? What should the additional research priorities be?

¹³ Refer to footnote 5.

¹⁴ In the field of criminology, desistance is generally defined as the cessation of offending or other antisocial behaviour.

How we work

Consultation

137. Before producing a sentencing guideline, the Council is required by legislation to consult upon a draft version of it and, as part of that consultative process, must seek the views of both the Lord Chancellor and the Justice Select Committee.
138. In practice, we routinely consult widely, particularly among sentencers and those who work in criminal justice. The consultations reflect the subject matter and for that reason they are often long and detailed. We are aware that responding in detail to complicated consultations is onerous, but consultation responses are essential in helping us develop effective guidelines. We generally consult for a period of 12 weeks.
139. Our consultations are published on our website as a pdf document with links to draft digital guidelines and also available as an online questionnaire on the [Ministry of Justice consultation hub](#). Respondents to consultations (including this one) are welcome to respond to only some of the questions, as not every aspect of a consultation will be relevant to all.
140. In addition to the statutory consultees we regularly receive consultation responses from individuals or groups including those representing: sentencers (both judges and magistrates), the legal professions, prosecutors, victims (such as Victim Support or the Victims' Commissioner), academics and charities working in criminal justice (such as the Prison Reform Trust and the Howard League). We also receive responses from those with a particular interest in the subject matter of individual consultations which may include trade unions, medical colleges, campaigning charities, Police and Crime Commissioners, enforcement agencies and local government.
141. A response to the consultation, setting out the comments and suggestions received and the Council's reasons for whether or not to make changes as a result of those suggestions is published on our website at the same time as the definitive guideline.
142. We are interested in hearing any suggestions as to:
 - how we can improve our consultation process for regular respondents; and
 - whether there are people or organisations we should be reaching but are currently not.

Guideline publication and coming into force dates

143. The Council has recently moved to a policy of bringing guidelines into force on four set dates in the year: 1 January, 1 April, 1 July and 1 October. This gives greater predictability to the process and should help to ensure that in-force dates are not missed by guideline users.
144. Historically, the Council has published definitive guidelines three months before the in-force date to allow time for the physical distribution of guidelines and familiarisation and training. One problem with such a long lead-in time is that it could potentially be perceived as unfair if an imposed sentence would be significantly different after the guideline comes into effect. Now that guidelines are accessed digitally, we have sometimes allowed a shorter time between guideline publication and coming into force. We are seeking views on whether a standard publication date of (for example) one month before the in-force date would be preferable.

Material to assist guideline users

145. We are also interested to hear whether we could develop material relating to guidelines in general or to specific guidelines to assist guideline users. Guidelines are designed to stand alone and should not require additional information; judicial training on guidelines is the province of the Judicial College and interpretation of guidelines is a matter for the Court of Appeal. Nevertheless, we have at times published case studies on new guidelines or videos on how to navigate guidelines, and we are seeking views on what we should do in future to assist guideline users.

CONSULTATION QUESTIONS ON HOW WE WORK

Question 25: Do you have views about how the Council how can improve the consultation process for regular respondents?

Question 26: Do you have views about whether there are people or organisations we should be reaching with our consultations but are not? If so, please suggest what we can do to reach them.

Question 27: Do you have views on how the Council should time the publication and coming into force of the guidelines?

Question 28: Is it the role of the Council to provide more assistance on the use and interpretation of guidelines? If so, please explain how you think this could best be achieved.

Next steps

This consultation runs until 9 June 2020. The key themes outlined here will also be discussed at our 10-year anniversary event to be held on Friday 3 April at The Law Society, 113 Chancery Lane, London WC2A 1PL. The event will provide consultees with another opportunity to take part in the consultation and help to shape the future direction of the Sentencing Council.

Annexes

Annex A: Consultation questions

- Question 1:** Is the Council right to continue to focus on the statutory duties that it has prioritised to date (broadly speaking: guideline development, monitoring and evaluation of guidelines, public confidence)? If not, what are your reasons for this?
- Question 2:** In particular, do you think the Council's current primary focus on guideline development and revision (including analysis and research and communication activities to support guidelines) is correct and should continue? Please provide reasons.
- Question 3:** If you think the Council should focus more on other activities please outline those areas and the reasons why.
- Question 4:** Taking account of your answers above what do you think the balance should be between guidelines (and the work that supports them) and other activities that you have identified? Please outline your reasons.
- Question 5:** Are there other sources of funding or funding models that the Council should consider pursuing in order better to fulfil its statutory duties?
- Question 6:** Are there any other broad matters that you would like to raise, or comments you wish to make on the Council, that are not covered by your answers to any other questions?
- Question 7:** What are your views on the extent to which the Council, through the development of sentencing guidelines, meets the duties to have regard to:
- the need to promote consistency in sentencing;
 - the impact of sentencing decisions on victims; and
 - the need to promote public confidence in the criminal justice system?
- Please suggest any ways in which you think this could be improved.

- Question 8:** What are your views on the suggested criteria (in paragraph 66 above) for prioritising the development or review of guidelines? Please suggest any additional criteria that you think should be considered or criteria you think should be removed.
- Question 9:** Should the Council expand the policy for making changes to existing guidelines (short of a full revision) as outlined in paragraph 53 above? Please suggest what situations should be covered by such a policy.
- Question 10:** Can you suggest practical ways in which the flexibility afforded by delivering guidelines in a digital format could be used by the Council to improve guidelines?
- Question 11:** Is there a guideline for a particular offence or set of offences that the Council should develop or revise as a priority? Please give reasons.
- Question 12:** Is there a guideline for a particular overarching issue that the Council should prioritise? Please give reasons and explain how best you think this could be addressed.
- Question 13:** Are there any ways in which the technical aspects of the Council's analytical work could be improved? If so, please state what these might be (for example, improving the data sources we draw on or the time we give to accessing different types of data). Please be as specific as possible.
- Question 14:** Are there any ways in which the focus of the Council's analytical work could be improved? If so, please state what these might be (for example, broadening out the types of impacts we evaluate – including more in relation to specific demographic groups, focusing more on assessing consistency in sentencing, or exploring the ways in which the guidelines are used in practice). Please be as specific as possible.
- Question 15:** Do you feel that the Council has prioritised, either too highly or insufficiently, any of our statutory duties that specifically relate to analytical work? If so, please state which ones and give your reasons.
- Question 16:** Are there any other areas that you feel the Council should be considering as part of the programme of analytical work? If so, please state what these are and give your reasons.

- Question 17:** Which areas of analytical work do you feel the Council should make the highest priority? Are there any areas that you feel are so important that they warrant slowing down the pace of guideline development/revision? Please state what these areas are and give your reasons.
- Question 18:** Are there any areas of work that you feel would be more suitable for an academic institution or external organisation to undertake? If so, please state what these are and give your reasons.
- Question 19:** Which areas of activity do you think could achieve most in promoting public confidence, and why?
- Question 20:** Are there any areas of existing activity in relation to promoting public confidence that you think the Council should do more of or less of, and why?
- Question 21:** Are there any other avenues we could use to inform the public about the Council and the guidelines?
- Question 22:** Do you have any views on the way the Council has addressed the duty to have regard to the costs of sentencing and their relative effectiveness in preventing reoffending?
- Question 23:** Do you have any view on other aspects more broadly in terms of the 'effectiveness' of sentencing that the Council might want to consider and if so, how we would go about doing this? To what extent should any further work be prioritised above other areas of the Council's activities?
- Question 24:** Should the Council carry out additional research in the area of effectiveness of reducing reoffending? What should the additional research priorities be?
- Question 25:** Do you have views about how the Council how can improve the consultation process for regular respondents?
- Question 26:** Do you have views about whether there are people or organisations we should be reaching with our consultations but are not? If so, please suggest what we can do to reach them.

Question 27: Do you have views on how the Council should time the publication and coming into force of the guidelines?

Question 28: Is it the role of the Council to provide more assistance on the use and interpretation of guidelines? If so, please explain how you think this could best be achieved.

Annex B: How the Sentencing Council has met the duties in the Coroners and Justice Act 2009

Duty	Description	How the Council has met this duty
s.119	Publish a report on the exercise of the Council's functions during the year	The Sentencing Council publishes an Annual Report every year, the last of which was in July 2019. The report is formally laid before Parliament.
s.120(3)(a)	Prepare sentencing guidelines about reductions in sentence for a guilty plea	A definitive guideline on <i>Reduction in Sentence for a Guilty Plea</i> was brought into force in June 2017. This guideline applies to adults. A similar guideline was incorporated into the <i>Sentencing Children and Young People</i> guideline, which came into force on the same date. Statistical work was undertaken to support the guideline development and a resource assessment was prepared. Qualitative work was conducted with the public, victims and offenders to establish their views on the existing guideline/reductions, and a review of a small number of sentencing transcripts took place.
s.120(3)(b)	Prepare guidelines about the rule of law as to the totality of sentences	A definitive guideline on totality was published in March 2012.
s.120(4)	(May) prepare other guidelines	Since the Council was set up in 2010, including guidelines on reductions in sentence for guilty plea and totality that it <i>must</i> prepare, the Council has developed 27 sets of definitive guidelines encompassing 145 separate guidelines that cover 227 offences and eight overarching topics. A further eight guidelines are currently in development.
s.120(5), (6), (7), (8)	Must publish draft guidelines and consult when preparing guidelines (including the Lord Chancellor and Justice Select Committee); must (or may) then publish definitive guidelines after making necessary amendments	All guidelines are subject to public consultation. Typically, this is for a 12-week period (although in specific circumstances – eg the need to expediate a guideline – this may be shorter). All responses are considered by the Council and relevant revisions made. A definitive guideline is then issued, two to three months ahead of the date on which it will come into force.
s.120(11)	When exercising the function of preparing guidelines, the Council should have regard to: <ul style="list-style-type: none"> - the sentences imposed by courts; - the need to promote consistency; - the impact of sentencing on victims; 	In developing sentencing guidelines, the Council considers a wide range of information and evidence in order to have regard to the issues outlined in the statute. We draw on statistical data (administrative data collected by the courts as well as data generated through our own analytical exercises), analysis of the content of Crown Court sentencing transcripts, and qualitative data that assesses the behavioural implications of new guidelines. In doing so, we can examine the

	<ul style="list-style-type: none"> - the need to promote public confidence in the CJS; - the cost of different sentences and their relative effectiveness in preventing reoffending; and - the results of monitoring 	<p>sentences currently imposed by courts, and assess their likely impacts (on sentence severity and consistency). The Council also considers the impact on victims and on public confidence when developing guidelines: there is a victims' representative on the Council, and research work is undertaken when relevant in relation to these areas. The Council is also appraised of evidence in the area of effectiveness in sentencing and where relevant includes explicit statements in guidelines (for example, the burglary guideline states that for some offenders who misuse drugs, a community order may be a proper alternative to a short custodial sentence). The Council also monitors and evaluates the guidelines, the results of which are fed into the development of subsequent guidelines and may lead to a decision to revise an existing guideline (such as the <i>Assault offences</i> guideline). To date, 10 guideline evaluations have been published.</p>
s.121(2), (3)	Guidelines should illustrate varying degrees of seriousness with which offences are committed with factors relating to culpability, harm and other relevant factors	<p>Sentencing Council offence specific guidelines provide a stepped process that focuses on the harm caused by the offence and culpability of the offender. This results in a starting point sentence that can be modified according to relevant aggravating and mitigating factors. Analysts work with policy makers to ensure that robust evidence is available on which to base these (feeding in the results from statistical analysis, transcript analysis and qualitative research). The Council also produces overarching guidelines on more cross-cutting issues that sentencers need to consider (eg domestic abuse, the imposition of community and custodial sentences). By their very nature, these are less specific (eg they do not contain sentence-level tables). However, they do provide more general information on the issues to take account of in sentencing.</p>
s.121(4), (5), (6), (8)	Guidelines should provide an offence range, category range, starting point, aggravating and mitigating factors and criteria for determining the weight to be given to previous convictions	<p>All Sentencing Council offence specific guidelines provide an offence range, category ranges, starting points, aggravating and mitigating factors and criteria for determining the weight to be given to previous convictions (through the provision of an expanded explanation). Analysts work with policy makers to ensure that robust evidence is available on which to base these (feeding in the results from statistical analysis, transcript analysis and qualitative research). The Council also produces overarching guidelines for sentencers (eg on domestic abuse, the imposition of community and custodial sentences). Because these cover more cross-cutting issues, they do not contain offence ranges, category ranges and starting points. However, they do provide</p>

		guidance on aggravating and mitigating factors and other factors affecting sentencing.
s.121(7)	Factors relating to guilty plea reductions, reductions for assistance to the prosecution and considerations of totality should be disregarded in considering mitigating factors above	Guidelines provide a stepped process for sentencing. The last steps in this process – after consideration of aggravating and mitigating factors – always cover reduction for a guilty plea, reductions for assistance to the prosecution and totality. For guilty pleas and totality, a link is provided to the full guideline.
s.121(10)	Starting points should relate to sentences that assume an offender has pleaded not guilty	All starting points in guidelines assume an offender has pleaded not guilty. For those who have pleaded guilty, reductions are applied after a starting point sentence has been determined.
s.122(2), (3), (4), (5), (6), (7) and (8)	The Council must prepare allocation guidelines, issue them as draft, consult on them and then publish them as definitive guidelines; they may from time to time review the allocation guidelines; they should have regard to need to promote consistency and the results of monitoring	A guideline on allocation was published in 2012 alongside guidelines for offences taken into consideration and totality. A revised allocation guideline was subsequently consulted on and the updated version published in 2015. An assessment of the guideline, drawing on Ministry of Justice data, was published in 2018.
s.123	The Council may prepare or revise guidelines and if urgent may dispense with the need to publish in draft and to consult (other than with the Lord Chancellor)	The Council always issues a call for views as part of wide consultations on the guidelines. It has never dispensed with the need to consult.
s.124 (1), (3), (5)	The Council may be asked to prepare guidelines by the Lord Chancellor or the Court of Appeal and it should consider doing so	Examples of when this has occurred include a request from the Lord Chancellor to review sentences for one-punch manslaughter, which was considered by the Council. The Council made the decision to develop, consult on and publish guidelines for offences of manslaughter more generally.
s.127(1), (2), (3)	The Council must prepare and publish resource assessments for both draft and definitive guidelines that assess the resources required for the provision of prison places, probation provision and youth justice services	Activity in fulfilment of these duties is a routine part of the Council's work. For all guidelines, an assessment of the resources is undertaken and published alongside the guideline consultation document. It is then updated, based on any further evidence generated during the consultation period or as a result of any changes made to the guideline itself. Resource assessments cover resources required for prison places, probation provision and youth justice services. However, due to the nature of some of the guidelines produced (largely covering custodial sentences), data issues (data being problematic in the area of community sentences) and the applicability of guidelines (most guidelines relating to offenders aged 18 and over), most of the Council's resource assessments focus on prison places.

s.128(1), (2)	<p>The Council must monitor the operation of the guidelines and consider what conclusions can be drawn, including:</p> <ul style="list-style-type: none"> - the frequency with which, and extent to which, courts depart from sentencing guidelines; - factors which influence the sentences imposed by the courts; - the effect of guidelines in promoting consistency; and - the effect of guidelines on the promotion of public confidence in the criminal justice system 	<p>The Council monitors all guidelines and, to date, has published evaluations of 10 guidelines. These evaluations draw on quantitative and qualitative data to explore the impact of guidelines on sentencing outcomes (particularly in relation to sentence severity) as well as any implementation issues that may have arisen. Due to the volume and nature of the data collected, analysis is generally based on all offenders. However, if sample sizes permit, work has been undertaken to look at the impact on specific groups (for example, in January 2020, the Council published a report investigating the association between an offender's sex and ethnicity and the sentence imposed at the Crown Court for drug offences.</p> <p>Research is also undertaken to try to establish what might be influencing observed findings (eg whether there any specific aspects of the guideline causing this). Depending on the findings, the Council may decide to revise the guideline – or certain aspects of it – as has been the case for example with the assault and burglary guidelines.</p> <p>On consistency, the Council has commissioned work in this area and is currently supplementing this with internal work. The key outcomes from these pieces of work will become available later in 2020 and the Council hopes that assessment of consistency can then become a more standard element in guideline evaluations.</p> <p>On monitoring the effect of guidelines on the promotion of public confidence in the criminal justice system, the Council published a report in 2019 on this area. The work, undertaken by independent research agency ComRes, covered the public's knowledge of, and attitudes towards, the CJS, sentencing, and sentencing guidelines. Subject to resources, the Council hopes to re-run some of these questions in future years to provide a comparison over time.</p>
s.128(3)	The Council should include in the Annual Report a summary of monitoring work undertaken and any conclusions drawn from this	The Annual Report contains details on all analytical work undertaken in support of guideline production and revision. This includes any monitoring and evaluation work undertaken.
s.129(1)	The Council must publish information regarding the sentencing practice of magistrates in relation to each local justice area; and information regarding the practice of the Crown Court in relation to each	The Council has not to date felt it appropriate to gather and publish information of this nature. Interpreting data produced on a local level would be potentially misleading if the analysis was not able to control for other factors that may have an influence – eg the type of case load, socio-economic status of the population in that area, and type of area (eg urban versus rural).

	location at which the Crown Court sits	Controlling for these factors would require linking to other organisations' data, something which would be difficult and resource intensive.
s.129(2)	The Council may also promote awareness of matters in relation to the sentencing of offenders, in particular the sentences imposed, the costs of different sentences and their relative effectiveness in preventing reoffending, and the operation and effect of guidelines	The Council's analytical unit produces an internal document, circulated annually to Council members, which summarises the conclusions of high-quality research in this area. This ensures that all Council members have a shared understanding of the current literature relating to sentencing and reoffending to consider as part of their deliberations. Guidelines also take account of the issues, where relevant (for example, the <i>Burglary offences</i> guideline states that for some offenders who misuse drugs, a community order may be a proper alternative to a short custodial sentence).
s.130(1), (2)	The Annual Report must contain a sentencing factors report that contains an assessment of the effect that any changes in sentencing practice are having on the resources required for: the provision of prison places; probation provisions; the provision of youth justice services	A summary of all resource assessments published within the relevant year is provided as part of the Annual Report. This summary highlights the type of impacts each guideline is expected to have.
s.131(1), (2), (3), (4)	The Annual Report must contain a non-sentencing factors report (and at other times the Council may publish this type of information having provided it to the Lord Chancellor). The report should cover which non-sentencing factors are having/likely to have a significant quantitative effect on resources. These factors include prison recall, breach of orders, patterns of reoffending, Parole Board release decisions, remand issues, etc	For the first three Annual Reports, the Council undertook analysis in this area. However, this analysis was hampered by the lack of data available to the Council in some areas. The work was also resource intensive in the context of the Council's other priorities and the size of the analytical team. A decision was therefore made to scale down this work and, instead, to provide a more condensed report that signposted the data sources so that the reader would be able to follow up the relevant information if so desired. This was felt to be a proportionate approach to fulfilling this duty.

s.132(1), (3)	The Council has a duty to assess the effect, and prepare a report, where the Lord Chancellor refers any government policy or proposals likely to have a significant effect on resources for prison, probation or youth justice services	<p>The Council has only received one request from the Lord Chancellor. As a result, in 2011, the Council undertook, and published, data collection and analysis in relation to the request to consider the resource effects of proposed changes to Suspended Sentence Orders (SSOs) contained in the Legal Aid, Sentencing and Punishment of Offenders Bill.</p> <p>The Council will continue to consider any requests from the Lord Chancellor and undertake analytical work in relation to these, as relevant.</p>
Schedule 15	This outlines the constitution of the Council and the experience members need to have to be appointed	The Council's constitution adheres to the requirements outlined in the statute. New members are appointed for a three-year term of office and based on the need to maintain the constitution set out in the statute.

Annex C: Sentencing guidelines

Definitive guidelines in force

IN FORCE DATE	OFFENCE SPECIFIC GUIDELINES
13/6/2011	Assault
16/1/2012	Burglary
27/2/2012	Drug offences
1/4/2014	Sexual offences
1/7/2014	Environmental offences
1/10/2014	Fraud, bribery and money laundering
1/2/2016	Theft offences
1/2/2016	Health and safety offences, corporate manslaughter and food safety and hygiene offences
1/4/2016	Robbery
1/7/2016	Dangerous dog offences
24/1/2017	Magistrates' court sentencing guidelines (MCSG)
1/6/2018	Bladed articles and offensive weapons
27/4/2018	Terrorism
1/10/2018	Breach
1/10/2018	Intimidatory offences
1/11/2018	Manslaughter
1/1/2019	Child cruelty
1/10/2019	Arson and criminal damage
1/1/2020	Public order offences
	OVERARCHING GUIDELINES
11/6/2012	Offences taken into consideration
11/6/2012	Totality
1/3/2016	Allocation (revised)
1/2/2017	Imposition of community and custodial sentences
1/6/2017	Reduction in sentence for a guilty plea
1/6/2017	Sentencing children and young people – Overarching principles and offence specific guidelines for Sexual offences and Robbery
24/5/2018	Domestic abuse
1/10/2019	General guideline and expanded explanations in offence specific guidelines

Guidelines in development

CONSULTATION DATE	GUIDELINE PROJECT	PLANNED PUBLICATION
9/4 – 9/7/2019	Mental health overarching principles	Summer 2020
9/10/2019 – 14/1/2020	Firearms offences	Autumn 2020
22/10 – 3/12/2019	Terrorism (revision)	Spring/summer 2020
15/1 – 7/4/2020	Drugs (revision and new offences)	Winter 2020/2021
22/1 – 15/4/2020	Minor revisions to MCSG	Summer 2020
Spring 2020	Assault (revision) and attempted murder	tbc
tbc	Unauthorised use of trade mark	
tbc	Immigration and modern slavery offences	

Projects to be commenced in 2020

GUIDELINE PROJECT
Witness intimidation and perverting the course of justice
Burglary (revision)
Cyber crime

Guideline assessments/evaluations published

PUBLICATION DATE	GUIDELINE ASSESSMENTS
22/10/2015	Assault
14/11/2016	Environmental offences
13/7/2017	Burglary
6/3/2018	Allocation
1/6/2018	Drug offences
26/6/2018	Fraud, bribery and money laundering
29/10/2018	Sexual offences
5/2/2019	Theft
15/2/2019	Robbery
4/4/2019	Health and safety offences, corporate manslaughter, and food safety and hygiene offences

Annex D: Resources

Staff headcount (as at 1 April 2019)

Area of activity	Full time equivalent
Head of Office and support	2
Policy	4.9
Analysis and research	6.8
Legal	1
Communications	3
Total	17.7

Budget

Summary of budget and resource allocation

	2018/9 (actual) £000s	2019/20 (budget) £000s
Total funding allocation	1,404	1,466
Staff costs	1,207	1,214
Non-staff costs	163	252
Total expenditure	1,370	1,466

Annex E: How the Council meets the Public Sector Equality Duty

The Public Sector Equality Duty (PSED) is set out in section 149 of the Equality Act 2010, which came into force on 5 April 2011. It is a legal duty that requires public authorities (and those carrying out public functions on their behalf) to have 'due regard' to three 'needs' when considering a new policy or operational proposal. Complying with the duty involves having due regard to each of the three needs:

- The first is the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited under the 2010 Act.
- The second is the need to advance equality of opportunity between those who share a 'protected characteristic' and those who do not.
- The third is the need to foster good relations between those who share a 'protected characteristic' and those who do not.

Under the PSED the protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

Section 149 of the Equality Act 2010 contains further detail about what is meant by advancing equality of opportunity and fostering good relations.

In developing guidelines, the Council considers the PSED in the context of the individual offence(s). Where there are offences that are aggravated by reasons of being related to a protected characteristic, this will be of particular relevance. Most guidelines include statutory aggravating factors at step two, relating to offences motivated by or demonstrating hostility based on protected characteristics.

The Council considers data in relation to offenders sentenced for the offence(s), including data on volumes of offenders sentenced grouped by gender, ethnicity and age and this is published alongside the draft and definitive guidelines. Consultations include a consideration of the issues raised by the data and seek views as to whether there are any other equality or diversity issues the guideline has not considered.