

## FINAL STAGE RESOURCE ASSESSMENT: CHILDREN AND YOUNG PEOPLE

### 1 INTRODUCTION

1.1 This document fulfils the Sentencing Council's statutory duty, under section 127 of the Coroners and Justice Act 2009, to produce a resource assessment which considers the likely effect of its guidelines on the resources required for the provision of prison places, probation and youth justice services.

### 2 RATIONALE AND OBJECTIVES FOR THE NEW GUIDELINE

2.1 In 2009 the Sentencing Guidelines Council (SGC), the predecessor body to the Sentencing Council, published a definitive guideline *Overarching Principles – Sentencing Youths*. It also produced offence specific guidelines for children and young people within its definitive robbery guideline, published in July 2006, and within its definitive guideline on the Sexual Offences Act 2003, which was published in April 2007.

2.2 The Sentencing Council published new adult guidelines for sexual offences in December 2013 and for robbery offences in January 2016. The Council decided that a different approach was required for sentencing children and young people and that it would be inappropriate to produce these guidelines as part of the adult guidelines. The existing SGC guidelines have therefore remained in force during this period. Recognising that guidelines for children and young people have become piecemeal and dated, the Council has undertaken a separate project and is issuing new consolidated guidance to replace the SGC guidelines. The new offence specific guidelines for children and young people cover sexual offences and robbery offences.

2.3 In addition to the offence specific guidelines, the Council also decided to update the *Overarching Principles*, with the aim of providing a comprehensive and accessible document on the general principles to be applied when sentencing children and young people.

### 3 CURRENT SENTENCING PRACTICE

3.1 The *Overarching Principles* guideline does not apply to any specific offence. Overall sentencing statistics for children and young people, alongside statistics for children and young people sentenced for robbery and sexual offences have been published on the Sentencing Council website at the following link:

<http://www.sentencingcouncil.org.uk/publications/?type=publications&s=&cat=statistical-bulletin&topic=&year>.

This document presents simple statistics to give an indication of the overall number of children and young people sentenced and the number sentenced for certain sexual offences and robbery offences. It also looks at the sentences which children and young people receive. Children and young people are defined as those aged under 18 years of age. Within the statistics bulletins and tables they are referred to as 'youths'.

3.2 The principles surrounding the sentencing of children and young people differ significantly from the sentencing of adults. The principal aim of the youth justice system is to prevent offending and reoffending by children and young people. The court must also have regard for their welfare.

3.3 Courts have a range of different sentencing options designed to address the needs of children and young people. Non-Custodial sentences include Referral Orders (ROs) and Youth Rehabilitation Orders (YROs). A RO requires the child or young person to attend a youth offender panel and agree a contract, containing certain commitments (for example, to repair any damage caused or to make financial recompense), which will last between three months and a year. The aim is for them to make up for the harm caused and address their offending behaviour. A RO is the mandatory sentence in a youth court or magistrates' court for children and young people sentenced for the first time at court and who have pleaded guilty to an imprisonable offence.<sup>1</sup> A YRO can include one or more of 18 different requirements that the child or young person must comply with for up to three years. Some examples of the requirements that can be imposed are a curfew, supervision, unpaid work, electronic monitoring, drug treatment, mental health treatment and education requirements.

3.4 Children and young people can also be sentenced to custody (normally a Detention and Training Order; DTO) but it is only imposed in the most serious cases. When a custodial sentence is given, the aim is to provide training and education and rehabilitate the child or young person so that they do not reoffend. Sentences can be spent in secure children's homes, secure training centres and young offender institutions.

3.5 The number of children and young people sentenced at court in England and Wales has declined by 70 per cent, from 96,200 in 2005 to 28,700 in 2015 (Figure 1).

3.6 In 2015, around 1,800 children and young people were sentenced to immediate custody (mainly DTOs), approximately 19,800 were sentenced to a community sentence (including YROs and ROs) and 7,200 received other types of sentences (this includes discharges, fines and otherwise dealt with disposals).<sup>2</sup>

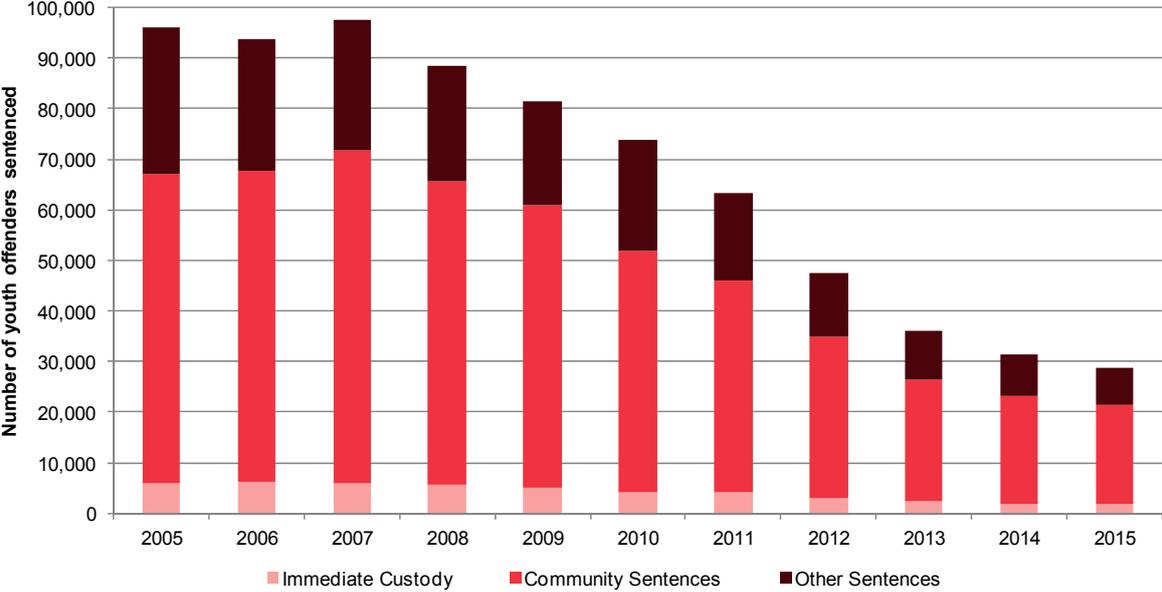
3.7 Over time, the number of children and young people sentenced to immediate custody has fallen from approximately 6,000 in 2005 to 1,800 in 2015, a decline of 70 per cent. The number of children and young people given a community sentence has also declined over time, from around 61,100 in 2005 to 19,800 in 2015 (68 per cent).

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<sup>1</sup> Exceptions are for an offence where a sentence is fixed by law or if the court deems a custodial sentence, an absolute or conditional discharge or a hospital order to be more appropriate.

<sup>2</sup> These figures, and those presented in the rest of this bulletin, are taken from the Ministry of Justice (MoJ), Court Proceedings Database. More detailed breakdowns of the disposal types (for example, how many community sentences were YROs/ROs) are available in the Criminal Justice Statistics annual data tools: <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2015>, and further information on children and young people is published in Youth Justice Annual Statistics: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/495708/youth-justice-statistics-2014-to-2015.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/495708/youth-justice-statistics-2014-to-2015.pdf) (p36)

**Figure 1: Trend in the number of young people sentenced, 2005-2015<sup>3</sup>**



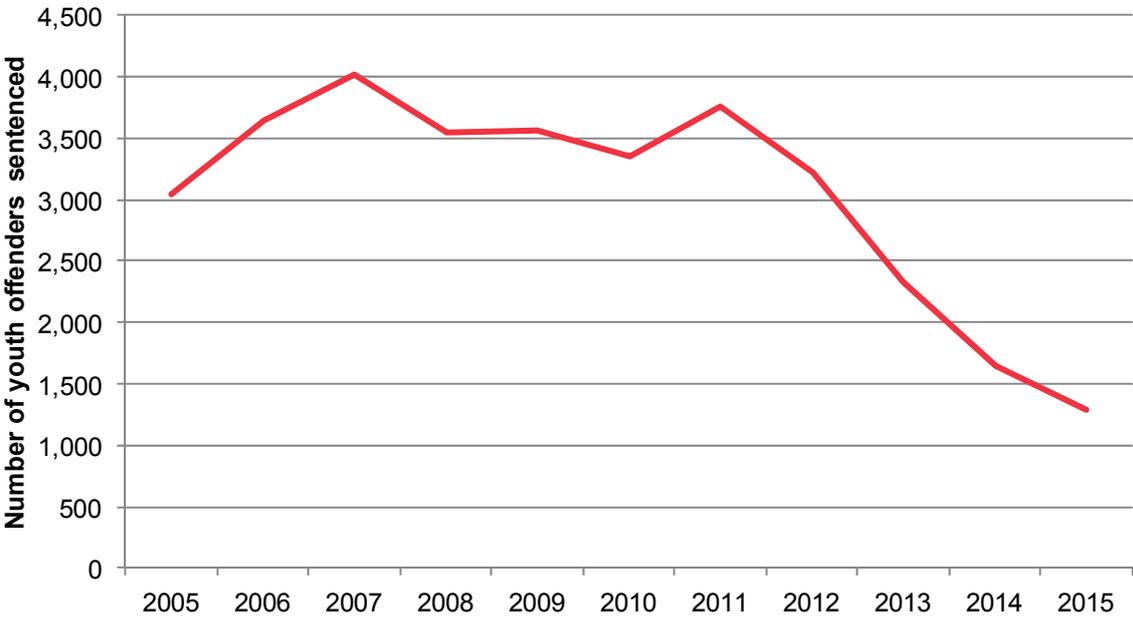
**Robbery**

3.8 Since 2005, the number of children and young people sentenced for robbery offences has declined (Figure 2). In 2005 there were approximately 3,000 children and young people sentenced for robbery offences. This peaked at 4,000 in 2007 and has since declined to 1,300 in 2015.<sup>4</sup>

<sup>3</sup> For details of data collection and methodology please see <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2015>. The figures relate to persons for whom these offences were the principal offences for which they were dealt with. When a defendant has been found guilty of two or more offences it is the offence for which the heaviest penalty is imposed. Where the same disposal is imposed for two or more offences, the offence selected is the offence for which the statutory maximum penalty is the most severe. Every effort is made to ensure that the figures presented are accurate and complete. However, it is important to note that these data have been extracted from large administrative data systems generated by the courts and police forces. As a consequence, care should be taken to ensure data collection processes and their inevitable limitations are taken into account when those data are used.

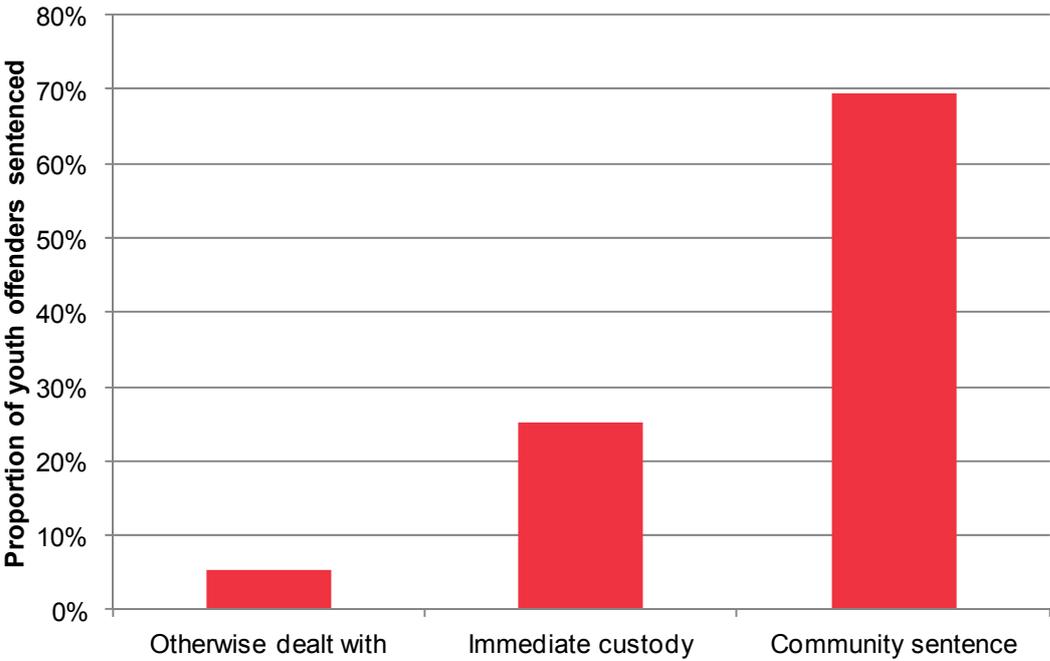
<sup>4</sup> Robbery totals shown here differ from MoJ published statistics as these figures exclude offences of assault with intent to rob, which are included in MoJ figures.

**Figure 2: Number of youths sentenced for robbery offences covered by the guideline, 2005-2015**



3.9 Community orders were the most frequent sentence outcome for children and young people sentenced for robbery offences, comprising 69 per cent of all sentence outcomes in 2015 (Figure 3). A quarter of children and young people in 2015 were sentenced to immediate custody. This equates to approximately 330 children and young people.

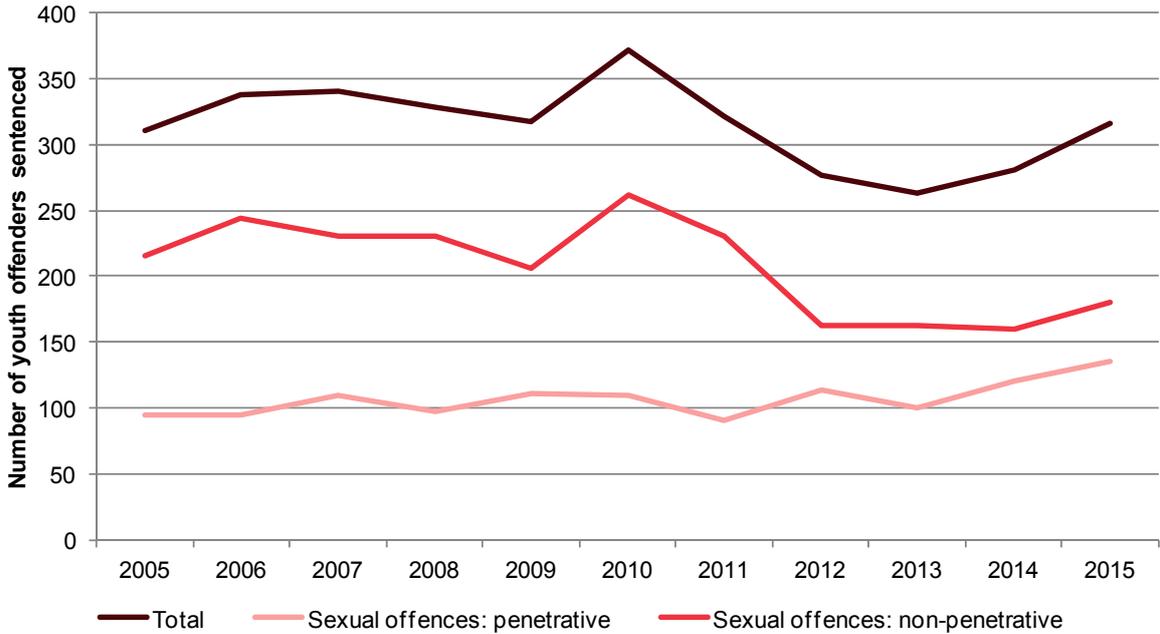
**Figure 3: Proportion of youths sentenced for robbery, by sentence outcome, 2015**



**Sexual Offences**

3.10 Sexual offences have been separated into penetrative and non-penetrative offences in line with the guideline. Since 2005 there have been approximately 300 children and young people sentenced for certain sexual offences per year (Figure 4). In 2015, 57 per cent of these offences were non-penetrative.

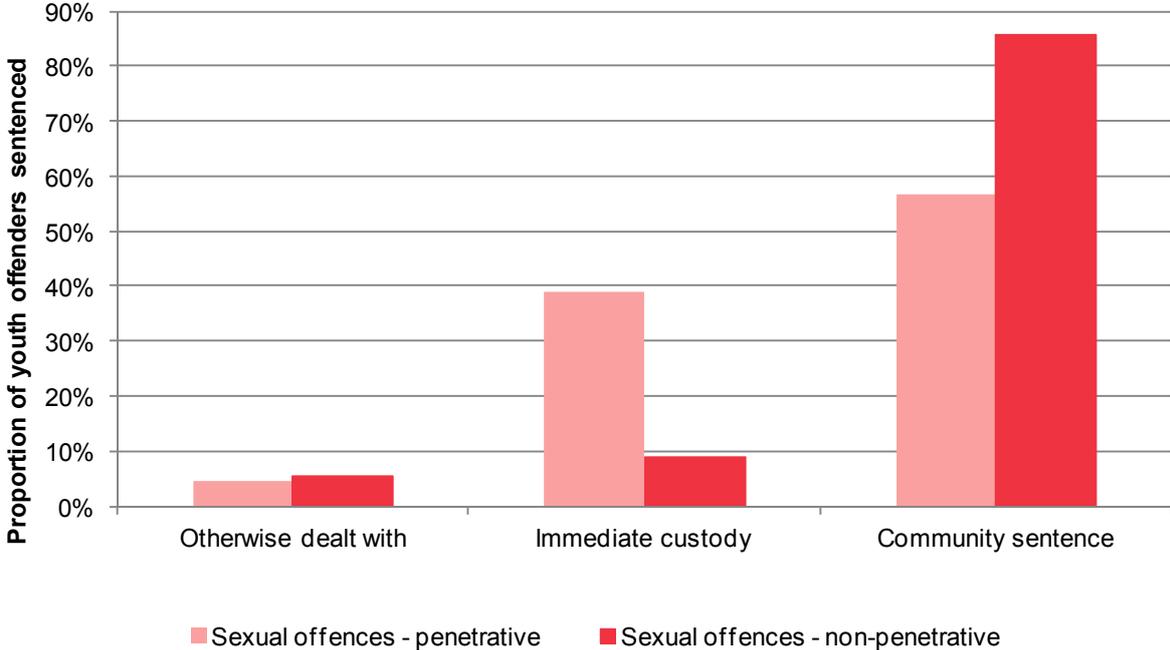
**Figure 4: Number of youths sentenced for certain sexual offences covered by the guideline, 2005-2015<sup>5</sup>**



3.11 Of those sentenced for a penetrative sexual offence in 2015, 57 per cent received a community sentence and 39 per cent were sentenced to immediate custody (Figure 5). In comparison, 86 per cent of children and young people sentenced for a non-penetrative offence received a community sentence and nine per cent received immediate custody. In total this equates to around 70 children and young people sentenced to custody for sexual offences in 2015.

<sup>5</sup> The offences included are: rape, assault by penetration, rape of a child under 13, assault by penetration of a child under 13 (grouped as ‘penetrative sexual offences’) - Sexual Offences Act 2003, s.1, 2, 5 & 6; sexual assault, and sexual assault of a child under 13 (grouped as ‘non-penetrative sexual offences’) - Sexual Offences Act 2003, s.3 & 7. Note that rape does not include attempted rape. Some published tables (including the Criminal Justice Statistics annual 2015 data tools) group rape and attempted rape together, and so figures here will not necessarily match those published elsewhere.

**Figure 5: Proportion of youths sentenced for sexual offences, by sentence outcome, 2015**



**4 SUPPORTING EVIDENCE**

4.1 To support the development of the guideline the Council has undertaken various analytical exercises. These exercises help to improve the Council’s confidence in the likely resource effects of the new guidelines and reduce the risk of unintended consequences. These exercises include:

- Research with 21 sentencers in 2012 to understand the general approach taken to sentencing children and young people.
- An online survey to explore the themes identified in the early interviews in 2012. In total 138 magistrates and district judges completed the online survey which sought their views on current guidance and preferences for future guidance.
- Sentencers’ responses to the draft Overarching Principles and draft sexual offences and robbery guidelines have been explored in a two stage qualitative research exercise in 2015 and 2016.
  - In 2015, exploratory research was carried out with 18 sentencers, focusing on the Overarching Principles and early drafts of the sex and robbery guidelines. This research was supplemented by consultation with a small number of sentencers, practitioners and legal advisers to assist in the further development of the guidelines.
  - A second stage of research was carried out in 2016 in which 26 sentencers (11 magistrates, 10 district judges and five Crown Court judges) were asked to sentence different scenarios using the draft sexual offences and robbery guidelines. By comparing sentences given using the draft guidelines to the sentences given under the current guidelines, the Council were able to gain a greater understanding of the potential impact the guidelines may have on sentencing practice. The research exercise suggested that the guideline may

have the following effect on sentencing: a) reduce variability in sentencing outcomes; and, b) shift sentencing from custodial to community sentences in certain instances. However, when considering these findings, it is important to bear in mind that this is based on a low sample size, and therefore cannot be considered conclusive. More so, the scenarios that were used in the research exercise were not necessarily representative of the most prevalent types of each offence, and thus the results cannot be seen as representative for robbery or sexual offences overall.

## **5 RESOURCE IMPACT**

5.1 The Council's aim in developing these guidelines is not to change sentencing practice but to make the guidelines more accessible and useful to sentencers and to promote a more consistent approach to sentencing.

5.2 For children and young people sentenced for the first time for a criminal offence and who have pleaded guilty to an imprisonable offence, a Referral Order (RO) remains the mandatory sentence in both of the new guidelines.<sup>6</sup> There is greater flexibility to receive subsequent ROs under the new guideline, compared to the existing guidance (due to a change in legislation). Therefore the Council does not anticipate any inflationary impact for this group.

5.3 The resource impact of the new guilty plea guideline for children and young people is discussed in the separate resource assessment for guilty pleas, which can be found at the following link: <http://www.sentencingcouncil.org.uk/publications/item/reduction-in-sentence-for-a-guilty-plea-final-resource-assessment/>

5.4 The existing SGC sexual offences guideline covers a narrow range of sexual offences:

- Sexual activity with a child;
- Causing or inciting a child to engage in sexual activity;
- Engaging in sexual activity in the presence of a child;
- Causing a child to watch a sexual act;
- Sexual activity with a child family member; and
- Inciting a child family member to engage in sexual activity.

These guidelines include indicative starting points and ranges for sentencing a 17 year old.

5.5 The new guideline is designed to cover all sexual offending and can be used for sentencing any child or young person under the age of 18. The difference in scope makes it very difficult to compare the two guidelines directly. Like the existing guideline, the new guideline aims to set out when the custody threshold has been crossed. However, under the new guideline there is now a significant focus on personal mitigation (rather than offence mitigation).

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<sup>6</sup> The only time a mandatory referral order does not apply is if the committed offence carries a sentence fixed by law, if a custodial sentence is more appropriate (i.e. in very serious cases), when a hospital order is more appropriate or when an absolute or conditional discharge is more appropriate (i.e. in less serious cases).

5.6 The existing SGC robbery guideline covers street robbery, robberies of small businesses and less sophisticated commercial robberies whereas the proposed new guideline is designed to be used for any robbery offence and any person under the age of 18. The proposed robbery guideline sets out the offence related aggravating and mitigating factors as before, but now has a much stronger focus on personal mitigation.

5.7 The existing SGC robbery guideline includes a sentencing table which replicates the SGC's adult robbery guideline but with reduced sentences. The sentencing table is intended to be used for sentencing 17 year olds; where the court has a younger person before them the guideline advises reducing the starting point in recognition of the person's age or immaturity.

5.8 The Council considered adopting a similar approach to the SGC's approach for robbery, but concluded that such a guideline does not usefully assist a court in sentencing children or young people younger than 17. In addition the Council wanted to ensure that sentencers have a framework to use that allows a consistent approach to be adopted but did not prevent the sentencer from taking a very individual approach to sentencing, accounting for the child's or young person's age and/or maturity, their previous offending behaviour, and their personal background. As a consequence, the new sexual offences and robbery offence guidelines do not set out starting points and sentence ranges when sentencing children and young people to custody.

5.9 Research with sentencers suggested that there may be a shift from custodial to community sentences for a small number of cases where a custodial sentence is currently imposed. Therefore, the Council anticipates a small decrease in the use of custodial sentences and a corresponding uplift in the use of community sentences. In 2015, only around 6 per cent of children and young people were sentenced to immediate custody (including 70 children and young people sentenced to custody for sexual offences and 330 for robbery offences). As a result, the impact of this change on correctional resources is expected to be small.

## **6 RISKS**

6.1 The guideline is not intended to affect the average severity of sentencing, and as such, no resource effect is expected. However it is possible that sentencers do not interpret the new guideline as intended which could have an impact on resources.

6.2 The Council takes precautions in issuing new guidelines to try to reduce the likelihood of this occurring. Prior to the guidelines' release, research is conducted with sentencers to assess the likely effect of the guidelines on sentencing practice and consultees can provide their views of the likely effect of the guidelines.

6.3 The Council also uses data from the Ministry of Justice and where feasible the Crown Court Sentencing Survey<sup>7</sup> to monitor the effects of its guidelines to ensure any divergence from its aims is identified as quickly as possible.

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<sup>7</sup> However, only a small proportion of children and young people are sentenced in the Crown Court, where the offence is particularly serious.