



Sentencing Guidelines Council

Robbery

Response to Consultation

July 2006

Foreword

On 25th July 2006, the Sentencing Guidelines Council published a guideline in relation to sentencing of offenders convicted of robbery which, by law, courts are required to take into account.

The guideline has been agreed by the Council after careful consideration of advice from the Sentencing Advisory Panel, which was published on 5th May 2004, and of responses to its draft guideline which was published for consultation on 28th November 2005.

This document sets out the main issues raised in the responses, the conclusions of the Council and the reasoning behind the conclusions.

The Council is grateful for the comments received. There has been considerable support in the responses to the approach taken in relation both to the starting points and to particular aspects of sentencing for this offence. Although there is a single offence of robbery, there are wide variations in the features of individual cases and the guideline seeks to enable courts to adopt a consistent approach to the determination of sentence.

The definitive guideline can be found at www.sentencing-guidelines.gov.uk or can be obtained from the Sentencing Guidelines Secretariat, 85 Buckingham Gate, London SW1E 6PD.

Chairman
Sentencing Guidelines Council
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1. Background

1.1 The draft guideline was published on 28th November 2005. Those invited to respond were:

- Home Secretary
- Lord Chancellor
- Attorney General
- Home Affairs Committee
- Party Leaders and the Convenor of the Crossbench Peers in the House of Lords

1.2 A response was received from the Home Secretary which incorporated the comments of the Lord Chancellor and the Attorney General. In this paper it is referred to as the “Ministers’ response”. A comprehensive response was also received from the Home Affairs Committee.

1.3 Additional responses were received from Her Majesty’s Council of Circuit Judges and the Youth Justice Board (YJB).

1.4 The draft guideline was separated into two parts. Part 1 provided detailed guidance for sentencing offenders convicted of three types of robbery - street robbery, robberies of small businesses and less sophisticated commercial robberies. For completeness, the existing guidance relevant to the other two recognised types of robbery (violent robbery in the home and professionally planned commercial robberies) was summarised in Part 2 of the draft guideline.

2. Sentencing Ranges and Starting Points

2.1 Robbery is a serious offence for the purposes of sections 225 and 227 of the Criminal Justice Act 2003. Separate sentences are provided for ‘dangerous’ offenders and a conviction for robbery raises the need to consider these provisions, which will result in a substantial sentence for those offenders found to present a significant risk of serious harm to the public.

2.2 The Council agreed with the conclusion of the Panel that the degree of force should be the basis on which seriousness should be determined. However, the draft guideline was based on three levels of seriousness, rather than four as recommended by the Panel. The Council considered that this structure allows the flexibility within each level to take account of different factors, while adequately reflecting the range of conduct involved in different types of robberies.

2.4 The Panel identified the need for a separate guideline for adult and youth offenders. The Council agreed that this was important and the draft guideline contained separate guidelines for these two categories.

- 2.5 Having considered information about the current sentencing patterns for adult and youth offenders convicted of robbery, the Council concluded that there was no need through the guideline to make a significant change to current practices in youth courts and the Crown Court.
- 2.6 The Ministers' response indicated that they were content with the level of starting points proposed for those offenders who are not 'dangerous'. The Home Affairs Committee particularly welcomed the separate guidelines for adult and youth offenders and supported the principle that the majority of adults convicted of robbery should be sentenced to custody.
- 2.7 The Council of Circuit Judges described the guideline as "both realistic and in conformity with current sentencing practice generally in the Crown Court". The YJB was broadly in support of the guideline for young offenders "to the extent that (it is) in line with current practice as stated by the SGC". The Board suggested that the impact of the guideline (when implemented) be closely monitored as an increase in the severity of sentences for youth offenders would have significant repercussions.

3. Aggravating and Mitigating Factors

- 3.1 The draft guideline included, as Annex A, an extract from the Council's Guideline: *Overarching Principles: Seriousness* listing generic aggravating and mitigating factors. The draft guideline itself highlighted the aggravating and mitigating factors that are particularly relevant to robbery (the same for adult and youth offenders) and provided details of how these factors could influence a sentence for robbery.

Vulnerable victims

- 3.2 The Ministers' response suggested that two factors from the generic list should be included in the list of factors deemed especially relevant to robbery, to make clear that a robbery is aggravated when either of those factors is present. The two factors identified related to victims who were providing a service to the public or were particularly vulnerable.
- 3.3 Section D of the draft guideline provided details of aggravating and mitigating factors specifically relevant to the assessment of seriousness of an offence of robbery. Vulnerability of the victim was one of the listed aggravating factors and the explanatory text noted that this category included "persons performing a service to the public, especially outside normal working hours", and identified other "vulnerable" victim groups. The tables containing the starting points and sentencing ranges included "vulnerable victim targeted" as an

additional aggravating factor which should be read in conjunction with the text in Section D. The Council agrees with the Ministers' response that this is an important element but considers that the guideline already gives that element the proper emphasis and so has made no change.

No change would be made to the guideline. The Council considered that the two factors which the Ministers wished to highlight were covered sufficiently in the guideline.

Weapons

3.4 The Minister's response welcomed the approach taken in relation to offenders who carry or use a weapon in committing the offence. The Home Affairs Committee expressed concern about the carrying and use of knives during the commission of offences, including robbery. It pointed out that the potential effect of carrying a knife was extremely serious and recommended that the guideline should include an additional aggravating factor of premeditation shown by pre-arming.

3.5 The draft guideline distinguished between the medium and high levels of seriousness for robbery by reference to the presence and use of a weapon at the time the offence is committed. Elsewhere in the guideline the Council described how an offence will be aggravated where a weapon is involved in the use or threat of force.

3.6 However, the Council acknowledged that, even if a weapon is not used or produced, its possession during the course of an offence indicates premeditation and planning and therefore makes the offence more serious than a similar offence where no weapon is carried by the offender. It agreed to accept the Committee's suggestion.

The Council agreed to add the following to Section D(ii) paragraph (b), to Section G, paragraph 7 and Section H, paragraph 9.

“Possession of a weapon during the course of an offence will be an aggravating factor, even if it is not used, because it indicates planning.”

4. Young Offenders

4.1 The Home Affairs Committee and the YJB both made a number of recommendations specifically relating to the application of the guideline to young offenders.

Separate aggravating and mitigating factors for young offenders

4.2 The Home Affairs Committee welcomed the fact that the guideline recognised the need for separate guidelines and sentencing ranges for adult and young offenders. However, the Committee considered that, in order to recognise the different philosophy and statutory purpose of the youth justice system, and to allow for the varying significance of aggravating and mitigating factors for youths of different ages, those factors should be set out separately in the part of the guideline applicable to young offenders.

4.3 The YJB submitted that the guideline did not sufficiently address the issues of age, maturity, group behaviour influence and persistence as mitigating factors. The Board recommended that the guideline include separate mitigating factors to ensure that specific child-related issues are considered.

4.4 The Council had recognised the need to provide flexibility to allow sentencers to take account of age, by stating in the draft guideline that “for younger offenders sentencers should consider whether a lower starting point is justified in recognition of the offender’s age or immaturity.” However, it agreed that it was important to emphasise this point further and to give recognition to the other factors cited as issues that need to be considered when sentencing young offenders and the guideline has been amended accordingly.

The Council agreed that the following text should be included in Section D (ii) Aggravating and Mitigating Factors and in Section H Factors to take into consideration – Young Offenders, as paragraph 5.

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

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

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

4.5 The Home Affairs Committee also recommended that there should be more specific guidance on the proportionate (and appropriate) sentencing of younger offenders with the aim of ensuring that sentences contain all the elements necessary to ensure the successful rehabilitation of offenders.

4.6 In order to develop and incorporate such guidance, the Council would need to develop the guideline significantly, covering issues and approaches that would go beyond the consultation and advice of the Panel. The recommendation of the Committee concerned matters of general principle rather than issues applying specifically to the offence of robbery.

4.7 Development of guidelines for sentencing young offenders is a topic on the Council's work programme for 2006/07. Such guidelines would consider the general principles relevant to the sentencing of youths, including issues such as those raised by the Home Affairs Committee, as well as any legislative changes to the youth justice system. Accordingly, the Council considered that such guidance would best be included in the general guideline on the sentencing of young offenders rather than in this guideline.

No change would be made to the guideline. The Council considered that the Committee's recommendation concerned issues that did not apply specifically to robbery and if they were to be considered would be more effectively dealt with in guidelines concerned with general principles for sentencing young offenders.

Referral orders

4.8 The Home Affairs Committee and the YJB both recommended that explicit mention be made of referral orders on account of their common use for young offenders convicted of robbery.

4.9 The Panel's advice outlined the place of referral orders within the sentencing structure for young offenders. Referral orders are only available when a first-time offender pleads guilty. In such circumstances, they are mandatory unless either an absolute discharge or custodial sentence is appropriate. As the approach taken in offence guidelines is to propose starting points and sentencing ranges for first-time offenders who have pleaded not guilty, it was decided that mention of referral orders was not necessary in the draft guideline.

4.10 The Council reconsidered this point in the light of the responses to the draft guideline but concluded that the reasoning for not including referral orders was sound and that it was not necessary to alter its original decision.

No change would be made to the guideline. The approach taken in offence guidelines is to propose starting points and sentencing ranges for first-time offenders who have pleaded not guilty, but referral orders are only available when a first-time offender pleads guilty.

Jurisdictional boundary

4.11 Adult offenders charged with robbery must be tried in the Crown Court. For young offenders, the maximum penalty for robbery means that it is potentially a 'grave crime'. Accordingly, where a youth court considers that a sentence greater than its maximum powers (of two years detention) might be appropriate, it may commit the offender to the Crown Court for trial. The Home Affairs Committee recommended that the guideline explicitly address this jurisdictional boundary in relation to each of the sentencing ranges identified for young offenders.

4.12 The YJB was concerned that the starting point of three years for young offenders sentenced for a robbery of medium level seriousness would increase the number of young offenders being sent to the Crown Court. Consequently it recommended a starting point of a two year Detention and Training Order for medium level robberies.

4.13 The Council specifically considered how to deal with the grave crime considerations when deciding the sentencing ranges and suggested starting points for the three levels of seriousness. The conclusion was that the least serious robberies should be dealt with in the youth court and this is reflected in the non-custodial starting point and sentencing range within the powers of the youth court. The Council was of the view that the majority of cases falling into the middle category of seriousness should be dealt with in the Crown Court and this is implicit in the suggested starting point of 3 years detention.

4.14 The Council reconsidered this issue in the light of the suggestions and concerns expressed, but decided it was not necessary to alter its original view. It also noted that the new procedures for the allocation of cases between the Crown Court and youth courts when implemented would be likely to reduce the significance of this issue.

No change would be made to the guideline. The starting points in the draft guideline were intended to reflect the different levels of seriousness identified and the Council was of the view that the vast majority of cases falling into the middle category of seriousness should be dealt with in the Crown Court.

4.15 The Home Affairs Committee also made a specific recommendation directed to the Government. It recommended that the provisions relating to the allocation of cases between the Crown Court and magistrates' courts be implemented with immediate effect. This did not affect the content of the guideline.

5. Purposes of Sentencing

5.1 There were a number of recommendations from consultees concerned with the circumstances in which a specific disposal may be appropriate in order to achieve a certain purpose, such as rehabilitation.

Drug rehabilitation requirement

5.2 The Home Affairs Committee wanted the guideline to encourage sentencers, in cases where they might feel able to impose a non-custodial sentence, to consider making a community order with a drug rehabilitation requirement where there is evidence that this would make a significant difference to offending behaviour. The Council of Circuit Judges made a similar recommendation, urging the Council to emphasise the desirability of considering a drug rehabilitation requirement where an offender has committed a robbery of the lowest level of seriousness to obtain funds to support an entrenched drug habit.

5.3 The Council considered that, while a custodial sentence was not inevitable, the circumstances in which a community order could be imposed on an adult offender would be exceptional. Therefore, it felt it would be inconsistent to suggest that such an order should be routinely considered for an adult offender even in the situation cited by the Council of Circuit Judges. However, it felt that a drug rehabilitation requirement could be a particularly helpful disposal in relation to some young offenders who would more commonly receive non-custodial sentences.

The Council agreed that the following text should be included in Section H: Factors to take into consideration – Young Offenders, as paragraph 15.

“Where there is evidence that the offence has been committed to fund a drug habit and that treatment for this could help tackle the offender’s offending behaviour, sentencers should consider a drug treatment requirement as part of a supervision order or action plan order.”

Rehabilitation in prison

5.4 The Home Affairs Committee made recommendations in relation to rehabilitative work provided in prisons. It recommended that the guideline on robbery should require sentencers, when explaining their reasons for imposing a custodial sentence, to make an explicit statement as to the levels of education and drug treatment that they expect to be provided within prison as a necessary part of that sentence.

5.5 The Council took the view that this recommendation was beyond its remit and that it is for National Offender Management Service and others to have responsibility for the provision of educational and rehabilitative facilities and effectiveness of rehabilitative work.

No change would be made to the guideline. The provision of educational and rehabilitative facilities is without the remit of the Council.

Restorative justice

5.6 The Home Affairs Committee made two recommendations that the guideline include reference to restorative process and measures. The first proposal was that, where fear or risk is successfully reduced by restorative measures and reparation made, this should be a mitigating factor.

5.7 The Council noted that restorative measures are unlikely to occur prior to sentence unless sentence is deferred. How, and to what extent, restorative measures can amount to mitigation or impact upon sentence is a matter of general principle and it would not be appropriate to deal with it in an offence guideline. The Council hopes to consider this issue more fully in due course.

No change would be made to the guideline. The issue of restorative justice being capable of mitigating sentence was one of general principle and should not be considered as part of a guideline dealing solely with the offence of robbery.

5.8 The Committee also recommended that the guideline mention the option of sentence being deferred to enable restorative processes to take place.

5.9 The Council's Guideline: *New Sentences: Criminal Justice Act 2003* sets out clearly the principles applying to the purpose and use of deferred sentences. The Council's view is that it would be unnecessary to refer to it specifically in this guideline.

No change would be made to the guideline. The circumstances in which a sentence can be deferred are set out in the guideline: *New Sentences: Criminal Justice Act 2003* and sentencers should be sufficiently aware of this option.

6. *Dangerous offenders*

6.1 The Home Affairs Committee noted that the public protection sentences provided by the Criminal Justice Act 2003 for offenders assessed as dangerous would be likely to affect many offenders convicted of robbery and recommended that the Council commission research into the deterrent effect of exemplary sentencing and the new sentences for dangerous offenders.

6.2 The Council had previously noted issues concerning the deterrent effect of sentencing and hopes to consider this issue more fully in due course.

The Council considered that it would not be appropriate to commission research into the deterrent effects of sentences for dangerous offenders and exemplary sentencing at the present time.