



# **Sentencing Council Consultation on the Robbery Guideline**

## **A response by Victim Support**

**January 2015**

Victim Support is the independent charity for victims and witnesses of crime in England and Wales. Last year we offered support to more than 1 million victims of crime and helped more than 198,000 people as they gave evidence at criminal trials through our Witness Service. Victim Support also provides the Homicide Service supporting people bereaved through murder and manslaughter and runs more than 100 local projects which tackle domestic violence, antisocial behaviour and hate crime, help children and young people and deliver restorative justice. The charity has 1,400 staff and 4,300 volunteers and has recently celebrated its 40th anniversary.

## **Sentencing Council consultation on the Robbery Guideline**

### **Victim Support's response**

Victim Support welcomes the opportunity to respond to the Sentencing Council's consultation on the Robbery Guideline.

As a general principle Victim Support believes that sentencing policy should be as open and transparent as possible. We believe that sentencing guidelines should be able to be read and understood by victims and the public. As such, each guideline should be sufficiently clear and detailed that an ordinary person with no legal training should be able to understand the guideline and its likely application. We believe that the Sentencing Council has largely achieved this in relation to the Robbery Guideline.

We fully endorse the Sentencing Council's decision to place greater emphasis on the harm caused to the victim in respect of robbery offences. We particularly welcome the focus on physical and psychological harm as opposed to measuring harm in terms of the value of the goods stolen.

With respect to assessing the harm caused to victims, Victim Support strongly believes that all guidelines produced by the Sentencing Council should include a reference to the Victim Personal Statement (VPS). Guidelines should set out how and when the VPS should be used and emphasise the benefit of the VPS to judges in assessing the harm caused by an offence. We are concerned that although the Robbery Guideline acknowledges the importance of the harm caused by an offence, it does not provide any guidance on how victims can convey this harm to the court. This risks undermining the good work which has been done in seeking to take account of the harm caused to victims in sentencing.

Further, we think that it would be useful were the guidelines to include information about sentencing remarks. We know that as well as an appropriate sentence being set by the judge, it is important that the victim feels respected and believed. This is something that could be addressed through sentencing remarks. We believe that the guidelines should outline best practice in sentencing, which is to acknowledge the harm caused to the victim in making sentencing remarks and ensure that, if the victim is present, the sentence is explained in full not only to the offender but also to the victim.

Victim Support's responses to the questions posed by the Sentencing Council are set out below. Due to the length of the consultation and the degree of overlap between the sentencing guidelines for each of the offences, we have primarily focused on the guideline for street robbery. The majority of the points we make in relation to the street robbery guideline are applicable to the guidelines for commercial robbery and robbery in a dwelling and can be considered as constituting our response to those sections where appropriate.

We know from our work with thousands of victims of crime each year that victims have differing opinions on the appropriateness of each sentence type and in particular the length of sentence that is appropriate for any given offence. For that reason we have chosen to focus on the factors that should be considered in sentencing, rather than the exact length of sentence that should be applied for each offence. We therefore do not take a view on the precise custodial ranges set out in the guideline.

## **Street robbery**

### **Q1 Do you agree with the proposed approach to the assessment of culpability?**

Yes.

### **Q2 Is it appropriate to distinguish between cases involving a bladed article or firearm or imitation firearm from those involving other types of weapon?**

We agree that cases involving a weapon are inherently more serious, not only because of the risk that serious physical harm may be caused to the victim but also because of the fear likely to be induced by the production or threat of a weapon. However, while gun and knife crime are clearly of serious concern to victims and the public it is not necessarily the case that a robbery involving a knife rather than, for example, an iron bar, will be more damaging either physically or psychologically to the victim.

### **Q5 Do you agree with the proposed approach to the assessment of harm in this preferred model (Harm Model A)?**

Yes. We strongly support the emphasis placed on the harm caused to the victim rather than the value of the goods stolen.

However, we are concerned that although the guideline acknowledges the importance of recognising the harm caused by an offence, it does not provide any guidance on how victims can convey this harm to the court. Whilst the court must consider 'serious physical and/or psychological harm caused to the victim' as placing an offence in the highest harm category, there is no indication of how the judge should ascertain whether such harm has been caused.

In our view all guidelines produced by the Sentencing Council should include a reference to the Victim Personal Statement, setting out how and when it should be used, and emphasising the benefit of the VPS to judges in assessing the harm caused by an offence. We are concerned that without providing any guidance on how harm should be assessed judges' risk missing out on vital information which would help them in their assessment of an appropriate sentence. This could undermine the good work which has been done in seeking to take account of victims in sentencing.

**Q6 Are the levels of harm simple to interpret?**

As outlined above, it is unclear how the harm caused to the victim will be conveyed to the court. We would be concerned were the court to make a presumption of the level of harm caused to the victim, without seeking their views directly in the form of a VPS.

**Q7 Should the value of the goods as expressed in categories 1 and 2 in Harm Model B carry the same amount of weight as the physical and/or psychological harm caused? If not, how should they be weighted?**

We would prefer the guideline to include harm model A rather than harm model B.

Where the value of goods taken is used as a factor in determining the seriousness of the offence it may be interpreted as suggesting that crimes against victims who own or happen to have been carrying high value items are more serious. Conversely, crimes committed against those with lower value items are considered less serious. This clearly discriminates (inadvertently or otherwise) against victims of poorer means whose possessions are of lower value.

With respect to accounting for items of sentimental or personal value, this could be included under 'psychological harm' in harm model A.

**Q9 Do you agree with the aggravating factors? Please state which, if any, should be removed or added.**

We agree with the aggravating factors listed. However, we believe that including 'previous convictions' merely as an aggravating factor does not give it sufficient weight. While we note that the consultation document states that this element is 'not subject to consultation' our argument is not that this factor should not be included in the guideline but rather that it is such a serious factor it should be given its own 'step' in the process of determining the sentence. We know from our work with victims that they consider previous convictions, indicating a pattern of offending and/or a criminal lifestyle, to be a very significant factor in assessing the culpability of the offender and thus setting an appropriate sentence.

**Robbery in a dwelling**

**Q30 Do you agree with the aggravating factors? Please state which, if any, should be removed or added.**

Victim Support broadly agrees with the aggravating factors included in the guideline. We particularly welcome the inclusion of 'Child at home (or returns home) when offence committed' and 'Victim compelled to leave their home (in particular victims of domestic violence)'. We know both from our experience of working with victims and from recent research conducted in conjunction with ADT that the impact of burglary on children can be

serve and long lasting<sup>1</sup>. In particular children whose homes have been burgled are more likely to have trouble sleeping, suffer from an increase in bed wetting and struggle at school. These findings are highly likely to be equally as applicable to robbery in dwelling.

However, our research also suggests that children are affected irrespective of whether they were at home at the time of the offence. We would therefore suggest that the Sentencing Council consider amending the aggravating factors to reflect this (although we note the Sentencing Council's suggestion that this would be taken into account at the assessment of harm).

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<sup>1</sup> A summary of the findings can be accessed at: <https://www.victimsupport.org.uk/about-us/news/impact-burglary-children-disturbing-new-research-reveals>