

SENTENCING TRENDS IN ENGLAND AND WALES (2002-2022)

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Introduction

This overview explores sentencing trends in England and Wales from 2002 to 2022 and addresses this key question: *How has the severity of sentencing changed over the past 20 years?* It is the first of a series from the Sentencing Academy.

There are three categories of offence in England and Wales. More serious crimes are indictable only, which can be dealt with only by the Crown Court. Other offences are either ‘triable either way’, resolved either by the Crown Court or by magistrates’ courts, or summary, heard only in magistrates’ courts. Indictable only offences account for a small minority (about 1% in 2022) of all cases sentenced. Triable either way and summary only represent the remaining 16% and 83% respectively.¹ Analyses are presented here for all offences and then separately for summary offences, as well as for indictable and triable either way offences combined.² We first document changes in the use of all sanctions over the period 2002-2022. Then we focus on the principal disposals, and in particular on sentences of imprisonment.

Despite fairly stable police-recorded crime rates over this period,³ the prison population in England and Wales has increased by almost 20% since 2002. Several explanations may account for this increase, including: more serious crimes being sentenced; an increase in the volume of repeat offenders; and more offenders being recalled to prison for breaching their licence conditions.

This overview explores one potential explanation, namely that sentencing has become harsher over the period. An increase in sentence severity may arise from a higher imprisonment rate, a decline in the use of less severe punishments such as the community order, or a combination of both trends. In addition, there may have been an increase in the length of prison sentences

¹ In this paper, all percentages are rounded for ease of presentation. The data used in this paper was accessed from the data sets from two of the Ministry of Justice’s Criminal Justice System statistics quarterly: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/220090/criminal-justice-stats-sept-2012.pdf and <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-june-2022/criminal-justice-statistics-quarterly-june-2022-html>.

² Prior to 2012, the data sets published by the Ministry of Justice combined indictable only offences and triable either way offences into a single category of indictable offences and for this reason we have needed to combine these two categories in this paper.

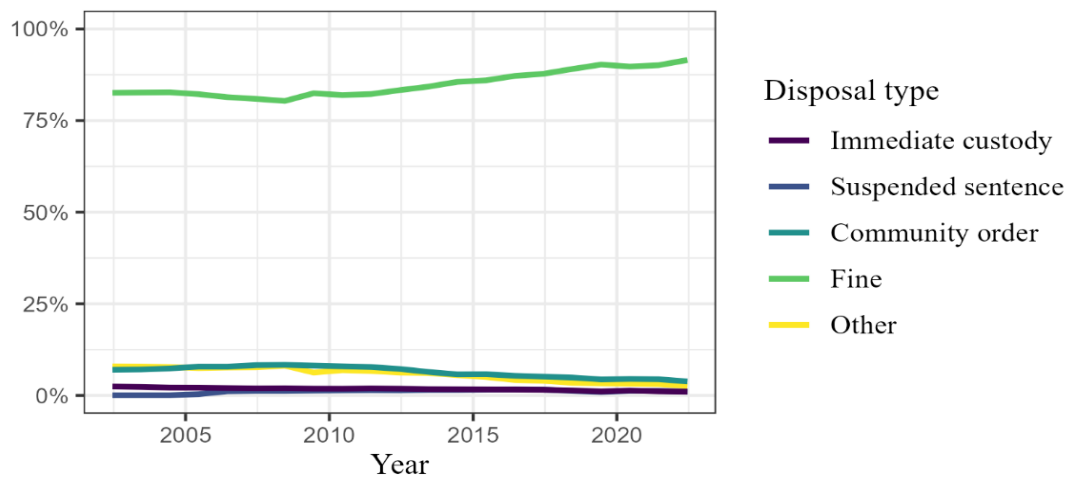
³ Police recorded crime rates were broadly similar in 2002 and 2022 but dipped in the intervening years. In both years they were substantially lower than in the mid-1990s. The Crime Survey for England and Wales has shown consistent falls in crime since the mid-1990s, partially offset since 2000 by rising cybercrime.

imposed. Any such changes would increase the prison population.

Sentencing trends stable across all offences

Figure 1 shows that across all offences combined, the use of the principal disposals was generally stable. Fines increased from 69% in 2002 to 79% in 2022. The percentage of immediate custodial sentences declined slightly from 8% to 6%. The use of suspended sentences increased from < 1% to 4% of all sentences in 2022. The proportion of community order sentences declined from 13% to 7%, as did ‘other’ sentences (falling from 10% to 4%). However, the portrait of stability masks an important shift in sentencing patterns for the more serious (indictable and triable either way) offences, to which we now turn.

Figure 1: Relative use of disposal types for all offences

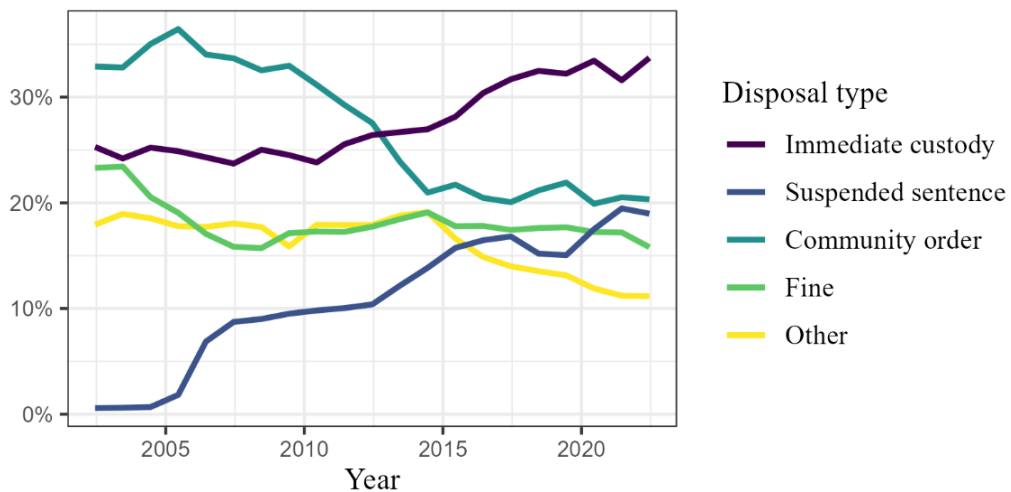


Significant shift to greater use of custody for indictable and triable either way offences

Figure 2 shows trends in the use of the principal sanctions imposed for indictable only and triable either way offences. The proportion of immediate custodial sentences increased from 25% to 34% between 2002 and 2022 while the less severe disposals declined. Suspended sentences of imprisonment increased from <1% in 2002 to 19% in 2022.⁴ Community orders declined from approximately one third to one fifth of all disposals. Fines also declined (from 23% to 16%). The category of ‘other sentences’ (e.g. restriction orders, hospital orders, guardianship orders, compensation orders, discharges and other disposals) fell from 18% to 11%. Thus, sentences imposed for the more serious offences has become more severe. There has been an increased use of custody at the expense of less severe sentencing options.

⁴ This increase was triggered by a legislative change which came into effect in 2005. Prior to this date courts could impose a suspended sentence only in exceptional circumstances.

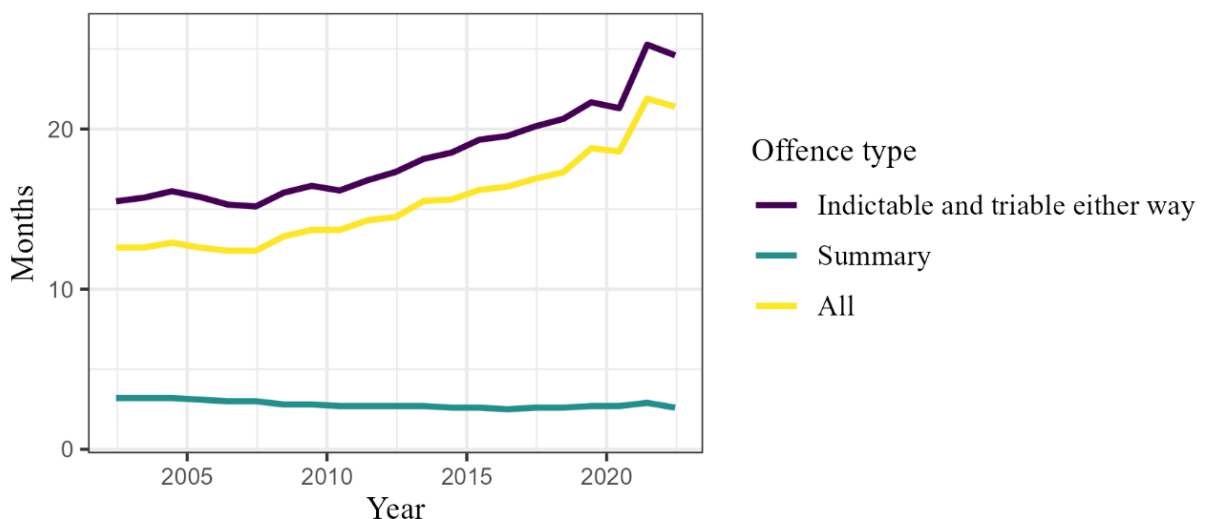
Figure 2: Relative use of disposal types for indictable and triable either way offences



Custodial sentence lengths for indictable and triable either way offences increased

In addition to becoming more frequent, prison sentences for indictable and triable either way offences also became longer. Figure 3 reveals an 86% increase in the Average Custodial Sentence Length (ACSL) for indictable and triable either way offences, from 15.5 months in 2002 to 24.6 months in 2022. In contrast, the ACSL for summary offences declined -- from 3.2 months in 2002 to 2.6 months in 2022.

Figure 3: Average custodial sentence length (in months) for all offences and by offence type



Imprisonment Index

Having documented trends in the proportion and length of prison sentences, we now combine

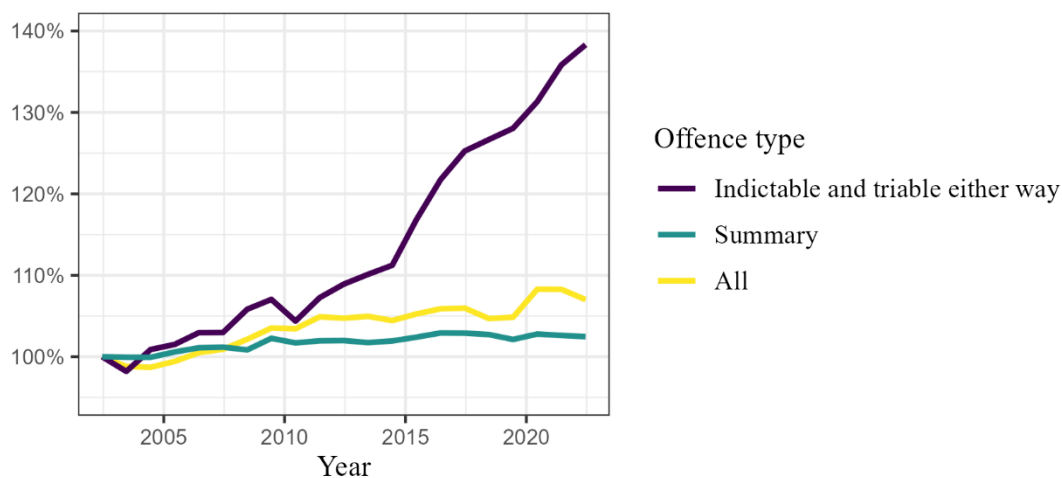
the two measures into a single index. Changes in the use of imprisonment as a sanction can take two forms. Prison sentences could become more or less frequent, and longer or shorter in duration. Examining the custody rate alone, or the ACSL alone may mislead. Courts may use custody more often but impose shorter prison terms. The opposite trend may also emerge: fewer, but longer prison sentences. In order to take both components into account (the probability of imprisonment and the sentence length), we employ an *Imprisonment Index*. This is created by multiplying the probability of an immediate custodial sentence by the ACSL, multiplied by 10.

We can illustrate the use of the Imprisonment Index by looking at all sentences imposed (all offences combined) in 2002. The custody rate that year was 7.9% and the ACSL was 12.6 months. This converts to an Imprisonment Index of 10.0.⁵ In 2022, the Imprisonment Index was 13.7 (a custody rate of 6.4% and ACSL of 21.4 months), a 37% increase in the use of imprisonment over the period.

This overall statistic masks great variation between less serious offences and the more serious indictable and triable either way crimes. The Imprisonment Index for summary offences in 2002 was composed of a 2.4% custody rate and an ACSL of 3.2 months. This generates an Imprisonment Index of 0.8. In 2022 the custody rate was 1.0% and the ACSL was 2.6 months for an index value of 0.3. In short, the use of imprisonment *declined* significantly for this category of offence during this period.

A very different picture emerges for indictable and triable either way offences. In 2002, the custody rate was 25.3% and the ACSL was 15.3 months. This generates an Imprisonment Index of 39. In 2022, the statistics were 33.7% and 24.6 months, giving an Index of 83. This represents a 113% increase.⁶ Figure 4 shows Imprisonment Index trends for all offences, indictable and triable either way combined, and summary convictions.

Figure 4: Imprisonment index, all offences, summary, and indictable and triable either way, 2002-2022



⁵ i.e. $0.079 \times 12.6 \times 10 = 9.54$.

⁶ This analysis does not include the suspended sentence order (SSO), although these are a form of custody as the court must have determined that the custody threshold was passed before imposing an SSO.

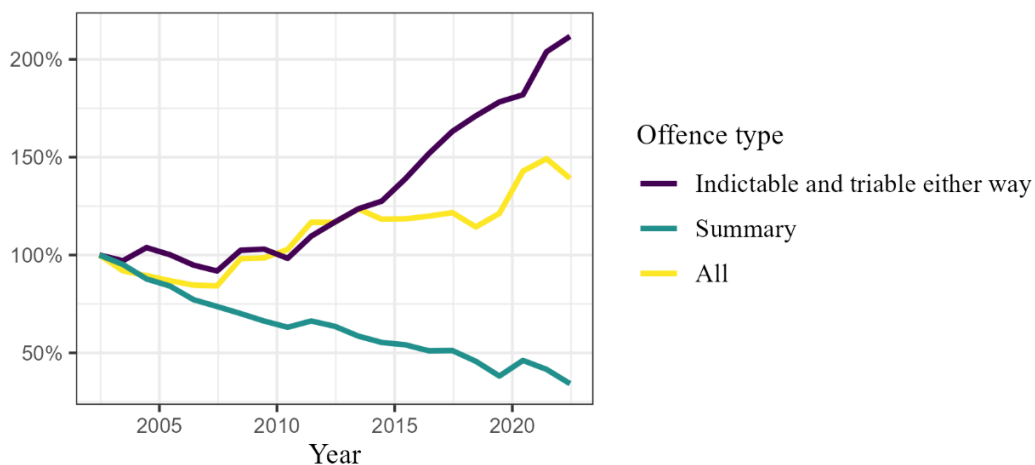
Sentence Severity Scale

Having presented an index combining two measures of imprisonment, we now analyse trends using an index which includes all disposals. It is hard to draw conclusions about overall severity when the individual disposals lack a common metric. Fines are measured in currency and prison sentences in time. One methodological solution employed in other jurisdictions involves the use of a sentence severity index. We rank different disposal types and durations of custodial sentences in terms of a single scale, which permits comparisons of the overall differences in severity across time and offence types. This scale was devised by Pina-Sánchez and Gosling (2022).⁷ This index provides an indication of the overall severity of the sentencing process, taking into account all disposals, rather than just one.

Trends in Sentence Severity

Figure 5 presents changes in overall severity over time. This reveals an overall increase in sentence severity, driven mainly by indictable and triable either way offences. Using this index, sentence severity for indictable and triable either way offences increased in 2012 and has continued since then. Sentences for indictable and triable either way offences are 38% more severe in 2022 than 2002. Sentence severity for summary offences remained stable, increasing by just 2% over the period. Although indictable and triable either way offences represent only one sixth of all sentences imposed, they have increased overall sentence severity by 7% since 2002.

Figure 5: Relative change in sentence severity (2002 as baseline)



⁷ Previous versions of this scale have been used by the Sentencing Council to evaluate their sentencing guidelines; see Isaac, A. (2018) *Sentencing Council: Assessing the impact of the Sentencing Council's Fraud, Bribery and Money Laundering Definitive Guideline*. Available at: <https://www.sentencingcouncil.org.uk/wp-content/uploads/Fraud-Bribery-and-Money-Laundering-guideline-assessment.pdf>. For further information on the scale see Pina Sanchez, J., & Gosling, J. P. (2022) 'Enhancing the Measurement of Sentence Severity through Expert Knowledge Elicitation', *Journal of Legal Research Methodology*, 2(1).

Conclusion

This review of sentencing trends over the last two decades reveals both change and stability. First, for all offences, sentencing has remained relatively stable. Our scale of severity estimates a modest overall 7% increase since 2002. Second, in contrast to the overall pattern, sentencing for the more serious (indictable and triable either way) offences has become more severe. Two indices of sentence severity – one restricted to imprisonment and the other including all disposals – converge on the same conclusion. While the use of custody for summary offences declined, sentences for indictable and triable either way crimes have become more severe over the past 20 years.

One key qualification applies. Due to limitations in the granularity of the sentence outcomes published in the Ministry of Justice quarterly statistics, we cannot explore changes within the use of specific disposal types beyond custodial sentences. While we can document important changes in average sentence length, we cannot explore changes in the amount of fines or the number and severity of conditions attached to community orders. It is possible that changes in severity have occurred within these disposal types, also affecting sentence severity in a way we are unable to detect.

The explanations for the increase in severity for serious crimes remain to be established. One possibility is that the seriousness of cases appearing for sentence in recent years has increased. The mix of sentenced offences may include a higher percentage of the most serious crimes which are more likely to attract a prison sentence, and possibly for a longer term. It is possible that a higher proportion of less serious cases now attract an out-of-court disposal, as a result of which the court caseload includes a higher proportion of the more serious crimes. In all likelihood, a number of factors explain the rise in severity of sentencing outcomes. The ACSL for indictable and triable either way offences has been increasing at a relatively steady pace over the entire period. The ACSL for any given year has almost always been the same or higher than the previous year. This slow but steady pattern of increase suggests that no single event such as a legislative change, the introduction of a new guideline or some other single intervention is responsible. Future research will explore different explanations for the increase in sentence severity.