



Sentencing young people guideline: one-year review

Research report by the **Scottish Sentencing Council**

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Sentencing young people guideline: one-year review

Summary of key findings

This report concerns a review of the operation of the ‘Sentencing young people’ guideline during its first year in effect (26 January 2022 to 25 January 2023) by means of an analysis of sentencing and appeals data for that period and the five preceding years.

The review was carried out in accordance with the Scottish Sentencing Council’s statutory obligation to review its guidelines and includes an exploration of the predicted impacts of the ‘Sentencing young people’ guideline: that it would influence judicial approaches to sentencing and increase consistency in approach; and that it would result in a change in sentencing practice for those aged 21 to 24 inclusive, with a greater emphasis on rehabilitation and a greater number of review hearings being fixed for community based disposals.

Overall, the review has found no indication from the available sentencing and appeals data that the guideline had any unintended consequences during its first year in effect. In most of the areas considered in the review, there is either no sign of, or it is not possible to establish, any impact arising from the guideline’s introduction. In some areas, trends in the data suggest a potential correlation with operation of the guideline but the degree of this is uncertain due to, among other things, the ongoing impact of the Covid-19 pandemic in 2022-23, and these trends do not provide evidence of causation, which cannot be established by quantitative data alone. There is also some evidence suggesting that courts were already approaching the sentencing of those under 25 differently to that of offenders aged 25 and over during the five years preceding the introduction of the guideline. Further analysis, incorporating both quantitative and qualitative research, will be carried out at the three-year review stage to explore these areas in greater detail, using a mixed-methods approach and drawing on the findings of this review, which provides an essential evidence-base.

A summary of the key findings in each area explored in the review is set out below.

[Number of disposals per year](#) (pages 14-16)

There is no sign that the ‘Sentencing young people’ guideline affected court volumes during its first year in effect. The number of disposals for offenders under the age of 25, including for each age group (under 18, 18-20, 21-24), was in steady decline between 2017-18 and 2019-20, followed by a sharp decline in 2020-21 as court volumes decreased during the height of the Covid-19 pandemic. There was a slight increase in the number of disposals in 2021-22 and a more significant increase in 2022-23 (to a level still below pre-pandemic numbers), reflecting the impact of the Covid-19 recovery programme.

[Offences disposed of by courts](#) (pages 16-19)

There is no sign that the ‘Sentencing young people’ guideline has had an effect on the pattern of offending. Between 2017-18 and 2022-23, the pattern of offending by young people remained

relatively stable, and the vast majority of disposals for offenders under 25 were for summary (less serious) offences. Eight of the ten crime or offence types associated with the most disposals for offenders aged under 25 were the same in each of the six years covered by this review. This corresponds with the pattern of offending among offenders aged 25 and over.

[Types of disposal by year](#) (pages 19-27)

Custody rates

It is not possible to determine the degree of any impact the 'Sentencing young people' guideline may have had on custody rates. While there was a slight increase in custody rates for the under 18 age group in 2022-23, the rates for offenders aged 18-20 and 21-24, and 25 and over, dropped in that year, although there was a more pronounced drop within the 21-24 age group compared to the others (see paragraphs 38-43 of this report for details). The extent to which this can be attributed to the guideline cannot be determined on quantitative data alone. It should also be noted that the year in question involved the post-Covid-19 recovery programme, which is likely to have affected custody rates. The extension of the presumption against short sentences to include custodial sentences of 12 months or less, which took effect in July 2019, is also likely to be a factor in changes to custody rates between 2019-20 and 2022-23. Custody rates for offenders aged 25 and over were higher in percentage terms than those for under 25s as a whole in each of the six years covered by this review.

Other disposal rates

The evidence is inconclusive as to whether or not the 'Sentencing young people' guideline has affected the rate of community payback order (CPO) disposals for offenders under 25. The rate of such disposals for 21-24 year olds increased in both absolute and percentage terms in 2022-23. This stands in contrast to both the 18-20 and under 18 age groups, where the rate of these disposals fell in percentage terms in 2022-23. While this could represent 21-24 year old offenders receiving a CPO rather than a sentence of custody, the impact of the Covid-19 pandemic on community-based sentencing in the preceding two years makes this impossible to say with certainty. For offenders aged 25 and over, the rate of CPO disposals was lower in percentage terms than for those under 25 in each of the six years covered by this review.

It does not appear that the 'Sentencing young people' guideline has had a noticeable impact on the use of restriction of liberty orders (RLOs), fines, admonitions, and absolute discharges. The rates of these disposals in 2022-23 in each age group (under 18, 18-20, 21-24) appear to be within the scope of previous years, with the possible exception of admonitions for 21-24 year olds, which were at the lowest rate in 2022-23. For offenders aged 25 and over, in percentage terms the rates of RLOs, admonitions, and absolute discharges were lower, and the rates of fines were higher, than for under 25s as a whole in each of the six years covered by this review.

[Average custodial disposal length](#) (pages 27-31)¹

No conclusions on the impact of the ‘Sentencing young people’ guideline on the average duration of custodial sentences can be drawn at this stage. The mean average duration of custodial sentences for 18-20 and 21-24 year olds shows a degree of variation between 2017-18 and 2022-23 with no consistent pattern being apparent. For under 18s, the mean average duration of custodial sentences in 2022-23 was at its highest point in the years under consideration. However, the small numbers of disposals in this category means this figure may be more prone to sudden shifts based on a few cases. The mean average duration of custodial sentences for under 18s over previous years also shows fluctuation.

The mean average duration of custodial sentences for offenders aged 25 and over was higher than for under 25s (as a whole and also in respect of the under 18, 18-20, 21-24 groups individually) in each of the six years covered by the review. The mean average duration of custodial sentences for solemn offences in the sheriff court and in the High Court was also higher for offenders aged 25 and over compared to under 25s in each of the six years covered by the review. In 2022-23, there was an increase in the mean average duration of custodial sentences imposed on under 25s in the High Court.

[Community payback orders with and without unpaid work requirements](#) (pages 31-34)

It is not possible to determine whether the ‘Sentencing young people’ guideline has had an effect on the rate of imposition of CPOs with and without unpaid work requirements at this stage. For all age groups under 25 – and for those aged 25 and over – the use of CPO disposals with no unpaid work hours decreased in percentage terms in 2022-23. This may represent a consequence of the Covid-19 pandemic, as the percentage rate of these disposals was highest in 2020-21 and 2021-22 (except for under 18s, where 2019-20 showed a higher rate of no unpaid hours CPO disposals than 2020-21). For 18-20 and 21-24 year olds, rates of CPO disposals with unpaid work hours during 2022-23 appeared to be returning to close to what they were before the pandemic.

[Fine value](#) (pages 34-35)

There does not appear to be any impact on fine values as a result of the introduction of the ‘Sentencing young people’ guideline. Overall, average fine values in respect of both under 25s and those aged 25 and over show a slow, but steady, increase over time – possibly attributable to inflation, but there may also be other causes.

[Appeals](#) (pages 35-36)

There is no evidence of the ‘Sentencing young people’ guideline impacting the overall volume of appeals following its introduction in 2022-23. Numbers of appeals concerning offenders aged up to 25½ when an appeal was lodged (to capture those aged under 25 when convicted but just over 25 when an appeal was lodged) show a pronounced decline in the year 2020-21 compared to the

¹ This excludes extended sentences, life sentences, and orders for lifelong restriction (OLRs) – see paragraph 52 for further details.

three preceding years, which suggests that the Covid-19 pandemic has had an impact. The extension of the presumption against short sentences to 12 months or less may also have contributed to the decline. The number of appeals in 2022-23 remained significantly below pre-pandemic levels.

Introduction

1. Under the Criminal Justice and Licensing (Scotland) Act 2010, the Scottish Sentencing Council must “from time to time review any sentencing guidelines published by it”.² To fulfil this duty, the Council has committed to undertaking reviews of offence and offender-specific guidelines after both one year in force and three years in force.³ This document covers the first year in force for the ‘Sentencing young people’ guideline.⁴ The guideline was approved by the High Court on 09 November 2021 and came into effect on 26 January 2022. It applies to the sentencing of those under the age of 25 at the date of their plea of guilty or when a finding of guilt is made against them.
2. As part of the guideline approval process, the Council is required to produce an impact assessment for any guideline it submits to the High Court for approval.⁵ This must include an assessment of the costs and benefits which implementation of the guideline is likely to give rise to, and an assessment of the likely effect of the guideline on the criminal justice system. The impact assessment for the ‘Sentencing young people’ guideline was published by the Council on 09 November 2021.⁶ It sets out two areas in which the Council assumed that the guideline would have an effect on sentencing practice and outcomes. These were:
 - 1) that the guideline will influence judicial approaches to sentencing and increase consistency in approach; and
 - 2) that the guideline will result in a change in sentencing practice for those aged 21 to 24 inclusive, with a greater emphasis on rehabilitation and a greater number of review hearings being fixed for community based disposals.⁷
3. In line with the Council’s methodology for the routine review of in-force guidelines, the one-year review of the guideline is intended to ensure that there have been no unintended consequences as a result of the guideline’s introduction. It explores whether, and if so the

² s3(6)(a), [Criminal Justice and Licensing \(Scotland\) Act 2010](#).

³ <https://www.scottishsentencingcouncil.org.uk/sentencing-guidelines/how-sentencing-guidelines-are-developed/>.

⁴ Information about the development of, and rationale for, the ‘Sentencing young people’ guideline can be found in the Council’s report about the public consultation exercise on the guideline:

<https://www.scottishsentencingcouncil.org.uk/media/fy5prh3l/final-ssc-report-on-sentencing-young-people-public-consultation.pdf>

⁵ s3(5), [Criminal Justice and Licensing \(Scotland\) Act 2010](#).

⁶ [Sentencing young people impact assessment](#), Scottish Sentencing Council, 09 November 2021.

⁷ The impact assessment also noted that the Council believes the guideline will: increase public knowledge and confidence by explaining the process of sentencing a young person and how it differs from sentencing an older person; increase understanding by ensuring that young people and others interested in a particular case know what is happening during the sentencing process and what the sentence is; assist judges and lawyers in the criminal courts, particularly through identifying the main factors that should be considered when sentencing a young person; assist those preparing reports for use in court by highlighting factors the courts will consider; and promote consistency in the sentencing of young people. These areas will be explored by means of qualitative research at the three-year review stage.

degree to which, there are any indications in the available quantitative sentencing and appeals data of changes in sentencing practice and outcomes over the period 26 January 2022 to 25 January 2023. Where possible, the review explores the predicted impacts detailed above. However, it focusses primarily on quantitative sentencing data gathered to support the administration of justice. These data do not include details about judicial approaches to sentencing. Before commencing the formal one-year review, the Council monitored the operation of the guideline throughout its first year in effect by considering published sentencing statements and media reports but these data constitute a very small sample size, which limits their evidential value, so they are not provided as evidence in this review. A full exploration of judicial approaches will be carried out at the three-year review stage, which will take a mixed methods approach combining quantitative and qualitative data collection, including interviews with sentencers.

4. Further, the one-year review can only provide a snapshot rather than a fully detailed picture. It covers a relatively narrow timeframe, within which certain key sentencing data were not obtainable. For example, as data on review hearings⁸ are only readily available once a hearing has happened, it is not possible to get a fair picture of review hearings at this stage. This is because any case sentenced within around six months before 25 January 2023 could have had review hearings fixed after that date, meaning data about them were not available for this review.⁹ Both judicial approaches and consistency in approach, and numbers of review hearings, will be considered as part of the fuller, three-year review, for which the one-year review provides the evidence-base.
5. A further issue which will be explored as part of the three-year review, subject to the availability of appropriate data, is the operation of structured deferred sentences¹⁰ in respect of offenders aged under 25. Structured deferred sentences are not a final sentencing disposal. They provide a structured intervention for individuals upon conviction and prior to final sentencing, and have been increasingly used across courts in Scotland in recent years.¹¹ While there is no uniform approach to structured deferred sentences, such interventions can last for up to six months, or longer in certain instances. This means that individuals aged under 25 placed on a

⁸ A court may fix periodic review hearings to monitor an offender's compliance with a community based disposal, such as a community payback order (CPO). On imposing a CPO the court may include in the order provision for it to be reviewed at such time or times as may be specified in the order. These are referred to as progress reviews. The offender must attend each progress review. On conclusion of a progress review, the court may vary, revoke or discharge the order.

⁹ The Council's understanding is that usual practice is for the first review hearings to be fixed between around three and six months of the order being imposed.

¹⁰ Information about the purpose, policy rationale, and operation of structured deferred sentences can be found here: <https://www.gov.scot/publications/structured-deferred-sentences-scotland-guidance/pages/1/>

¹¹ According to criminal justice social work statistics published by the Scottish Government, the number of SDS imposed in Scotland has risen steadily since 2018-19, apart from a drop in 2020-21 which reflected the impact of the Covid-19 pandemic. In 2018-19 there were 820 SDS (see <https://www.gov.scot/publications/criminal-justice-social-work-statistics-scotland-2018-19/pages/11/>); in 2022-23 there were 1300, the highest level to date (see <https://www.gov.scot/publications/justice-social-work-statistics-scotland-2022-23/pages/10/>).

structured deferred sentence within around six months before 25 January 2023 may still have been subject to it after the period covered by this review. Data about the eventual disposal in such cases were therefore not available for this review.

6. It was not anticipated that the guideline would have any impact on the number of cases involving those aged under 18 referred by courts to a children's hearing for advice, or remitted to a children's hearing for disposal.¹² This is because the guideline reflects the existing legislative provisions in this respect. Partly for this reason, but also due to limitations with the available dataset, an analysis of cases referred or remitted to a children's hearing in the period 26 January 2022 to 25 January 2023 was not carried out as part of this review.
7. While the focus of this review is on the impact of the guideline in respect of those it applies to – offenders aged under 25 at the time of conviction – analysis of some data in respect of offenders aged 25 and over has been carried out in order to provide an indicative comparison. However, the age range 25 and over is very wide, and different sentencing considerations may apply in respect of offenders in their late 20s or early 30s compared, for example, to offenders in their 60s or 70s. While the same applies to a degree in respect of offenders under 25, given the differing legislative provisions in respect of under 18s and under 21s, data on these latter two sub-groups have been considered as part of this review, whereas data on those aged 25 and over have been considered as a whole rather than being broken down into sub-groups. A direct comparison between the under 25 cohort and the 25 and over cohort should therefore be undertaken with a degree of caution.
8. Several further issues should be noted concerning the scope and nature of this review. First, the guideline applies only to the sentencing exercise following a conviction in a criminal court. This means that it does not apply to processes that occur prior to conviction, such as consideration of bail and remand or diversion from prosecution. Such matters are not within the Council's remit and are not considered as part of this review.
9. Second, in the two years immediately preceding the introduction of the guideline, the volume and nature of court business was directly affected by criminal justice measures introduced to respond to the Covid-19 pandemic, and the first year of the guideline's operation took place

¹² The Children's Hearing System deals with children and young people under the age of 18 for two main reasons: 1) they are vulnerable and in need of care and protection; or 2) they have committed an offence. In respect of the latter circumstance, under [section 49 of the Criminal Procedure \(Scotland\) 1995 Act](#), a sheriff or justice of the peace court *must* refer a case to a children's hearing for advice when the offender is under 18 and the subject of a compulsory supervision order. A court *may* refer a case for advice when the offender is: under 18, the subject of a compulsory supervision order, and their case is in the High Court; under 16 and not the subject of a compulsory supervision order; or aged 16 – 17½, not the subject of a compulsory supervision order, and has been convicted of a summary offence. After considering advice from a children's hearing, courts can either dispose of the case or remit it to a children's hearing for disposal (when the offender is under 16 and not the subject of a compulsory supervision order, the case can be remitted without first seeking advice). The [Children \(Care and Justice\) \(Scotland\) Act 2024](#) contains provisions which will, once commenced, bring all under 18s within the scope of the Children's Hearings System.

during the Covid-19 recovery programme. As is noted at several points in this review, this would have had an impact on sentencing over this three-year period due, among other things, to the more serious types of cases which were prioritised during the early stages of the pandemic, but the precise nature and degree of the impact is not possible to determine and is difficult to separate from any potential changes that could be attributed to the guideline. An assessment of the overall impact of the Covid-19 pandemic on sentencing is outwith the scope of this review.

10. Third, the guideline applies to all offences. This review accordingly explores its operation in respect of all offences, and does not analyse sentencing outcomes in respect of specific offences.
11. Finally, while one of the guideline's aims is to reduce reoffending, the timeframe covered by this review is insufficient to provide any meaningful data on reconviction rates, and the same may also be true in respect of the three-year review. A longer-term dataset and a longitudinal study over a period greater than three years may be required but the three-year review will provide an opportunity for the Council to consider this further.

One-year review

Data sources

12. This review draws on data from three key sources. First, courts are required to provide reasons when they either depart from, or decide not to follow, applicable sentencing guidelines.¹³ In either circumstance, the court will complete and submit to the Scottish Courts and Tribunals Service (SCTS) a pro forma recording these reasons. SCTS provides the Council with a redacted and anonymised version of the pro forma. The Council can then consider these pro formas to understand the reasons given by courts. Any departures and decisions not to follow are considered in the next section of this review.

13. Second, data on disposals¹⁴ given to offenders aged under 25 when convicted – and, for the purposes of an indicative comparison, aged 25 and over when convicted – have been provided by the SCTS, pursuant to its statutory duty to “provide the Council with such information relating to the sentences imposed by courts as the Council may reasonably require for the purposes of its functions”.¹⁵ It must be noted that these data differ from published national statistics on sentencing in three key aspects:

- 1) The data included in this review are for **all disposals**, with each disposal considered separately and there is a possibility for multiple disposals to be recorded for any given individual,¹⁶ rather than for **main charge only** (the approach taken in national statistics), where only the disposal for the most serious offence is counted.¹⁷ While considering data at main charge level allows for an understanding of the ultimate outcome for an individual, the guideline applies to all sentencing exercises for all offenders aged under 25 at the time of a finding of guilt or a guilty plea. As such, it is important to understand if there has been a change in sentencing for all disposals, not just those associated with the main charge. The data used in this review therefore cover a higher number of disposals than published national statistics.¹⁸ This difference results in an apparent reduction in the percentage of disposals which result in custody, community based

¹³ s6(2), [Criminal Justice and Licensing \(Scotland\) Act 2010](#).

¹⁴ The data used in this review relate to disposals in each court forum – the High Court, sheriff court, and justice of the peace court.

¹⁵ s10(1), [Criminal Justice and Licensing \(Scotland\) Act 2010](#). Some additional data concerning appeals were provided by the Crown Office and Procurator Fiscal Service – see footnote 39 on page 35 for details.

¹⁶ For example, if an individual was convicted of three offences – common assault, and two breaches of the peace – and received a community payback order for the assault, and was admonished and dismissed on the breaches of the peace, this would be counted as one community payback order and two admonitions.

¹⁷ In the same case as footnote 16 above, for example, the recorded disposal would be one community payback order *only*, as this is for the most serious charge.

¹⁸ It should also be noted that in some instances the number of disposals may not always equate to the number of orders made e.g. in a case with multiple charges, an offender may have been given a single order as a “cumlulo” sentence (i.e. one sentence for all of the offences) but in the data this may show as an order for each charge.

disposals, and fines, compared to published national statistics. This is a result of the different frame of reference, **not** a true disagreement in results.

- 2) The data considered in this review run from 26 January to 25 January in each of the years covered, rather than 01 April to 31 March for national statistics. This allows data for whole years to be compared, including the first full year of the application of the guideline, but as a result, the data do not align with timeframes in published national statistics. These differences mean that the data in this review **cannot be compared to published national statistics. Comparisons can only be drawn within this review.**
- 3) The data included in this review relate to offenders aged under 25 and 25 and over at the point of conviction. This age breakdown is **not included in published national statistics**, so a direct comparison between the data in this review and published national statistics is **not possible**.

14. Analysis of these data forms the bulk of this review, and can be found in the sections following the discussion of departures from, and decisions not to follow, guidelines. It should be noted that these data do not provide a means to analyse causes of offending behaviour and they also do not reflect a range of important factors that can affect the nature and volume of offences dealt with by courts in any given year, which can include, for example, policing approaches, prosecution practice, and court programming.

15. In respect of the third data source, during the period 26 January 2022 to 25 January 2023, the Council monitored published case data in the form of sentencing statements and media reports. This was undertaken as part of the monitoring and review programme to identify any unintended consequences or emergent trends regarding the operation of the guideline during its first year in force.¹⁹ This monitoring informed the Council's choice of areas to explore in more detail in this review but is not a comprehensive dataset and so is not used to provide evidence in the review.

Departures from guidelines and decisions not to follow guidelines

16. Courts are required by law to have regard to any applicable sentencing guidelines when undertaking sentencing.²⁰ A court may disregard a guideline by two statutory routes: by departing from the guideline in accordance with a provision contained within it; or by deciding not to follow the guideline.²¹ In either case, the court must state its reasons for doing so.

Departures

¹⁹ <https://www.scottishsentencingcouncil.org.uk/sentencing-guidelines/how-sentencing-guidelines-are-developed/>.

²⁰ s6(1)(a), [Criminal Justice and Licensing \(Scotland\) Act 2010](#).

²¹ s6(2), [Criminal Justice and Licensing \(Scotland\) Act 2010](#).

17. The Council may include within a guideline a circumstance or circumstances in which that guideline may be departed from.²² There is no such provision within the ‘Sentencing young people’ guideline. In terms of the statute, therefore, it is not possible for a court to have “departed from” the guideline.
18. Notwithstanding this, during the period 26 January 2022 to 25 January 2023 the Council was notified on one occasion of circumstances in which a court had “departed from” the guideline when sentencing a single offender for several different charges. The terms of the notification received by the Council suggested that the court had intended to decide not to follow the guideline, rather than depart from it, so this is considered as a “decision not to follow” in this review and discussed below.

Decisions not to follow

19. Aside from the incorrectly classified “departure”, above, there were **no** decisions not to follow the guideline, or any other guidelines in force, made known to the Council during the period 26 January 2022 to 25 January 2023. As the “departure” concerned a single offender, no conclusions can be drawn from it and the Council does not consider that any specific action is required, beyond existing routine activities to raise awareness of the guideline.²³
20. Based on reported departures or decisions not to follow the guideline, there is no evidence in the period 26 January 2022 to 25 January 2023 of the guideline having unintended consequences or failing to function as expected.

Quantitative analysis of sentencing data

21. Data included in this review were provided by SCTS and are drawn from a live operational case management system for the processing of court business. The information held on the system is structured for these operational needs, rather than for statistical reporting or research purposes. Although every effort has been made to ensure the data presented here are accurate, it is not possible to undertake quality assurance to the same level as for national statistics. Care should therefore be taken in drawing conclusions from these data. As noted at paragraph 13 above, these data should **only** be used for the purpose of considering the impact of the guideline. These data should **not** be compared to other datasets, including published national statistics, as frames of reference and approaches to classification will differ.
22. It should be noted that the two years immediately preceding the introduction of the guideline reflect the impact of the Covid-19 pandemic. This affected both the volume and nature of cases

²² s3(3)(d), [Criminal Justice and Licensing \(Scotland\) Act 2010](#).

²³ The Council continues to carry out awareness-raising activities concerning the guideline with a range of stakeholders, although judicial training and education is the responsibility of the [Judicial Institute for Scotland](#).

dealt with by courts during those two years, and some of the sentences imposed.²⁴ As such, further care should be taken in comparing these years with those preceding and following.

23. It is also important to note that the presumption against short sentences (PASS)²⁵ was increased in 2019 from a presumption against custodial sentences of three months or less to a presumption against custodial sentences of 12 months or less. The extended presumption applies to sentences for offences committed on or after 04 July 2019. This is likely to cause a degree of change between figures before 2019-20, 2019-20 itself, and 2020-21 onwards.

Number of disposals per year

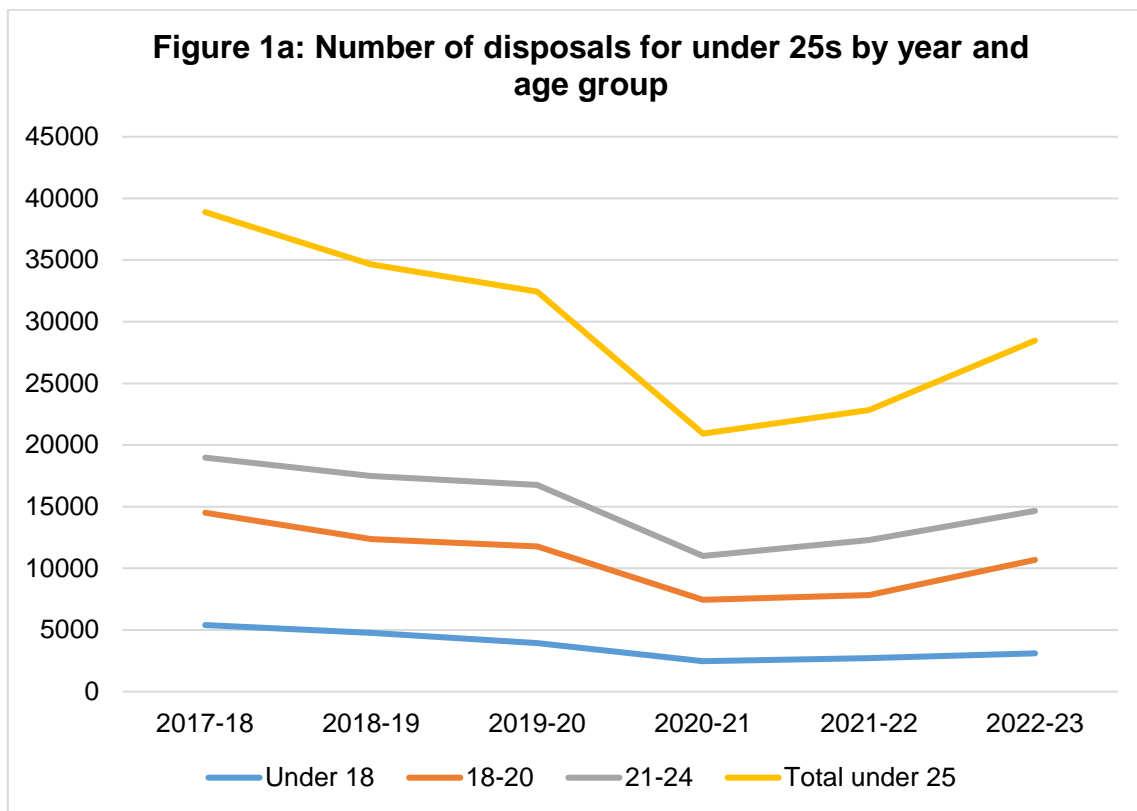
24. **Table 1a** and **figure 1a**, below, provide a breakdown of the number of disposals for under 25s per year (running from 26 January to 25 January), split by age group for the five years immediately preceding the introduction of the guideline, as well as the year following the introduction of the guideline.

Table 1a: Number of disposals for under 25s by year and age group

Year	Under 18	18-20	21-24	Total under 25
2017-18	5401	14507	18978	38886
2018-19	4781	12371	17488	34640
2019-20	3930	11766	16758	32454
2020-21	2472	7450	11003	20925
2021-22	2720	7827	12300	22847
2022-23	3107	10690	14664	28461

²⁴ As a result of [The Community Orders \(Coronavirus\) \(Scotland\) Regulations 2021](#), the number of hours specified in community payback orders for unpaid work or other activity requirements were reduced by 35% during the pandemic, with the exception of those imposed for domestic abuse, sexual offences, or stalking.

²⁵ s204(3A), [Criminal Procedure \(Scotland\) Act 1995](#).



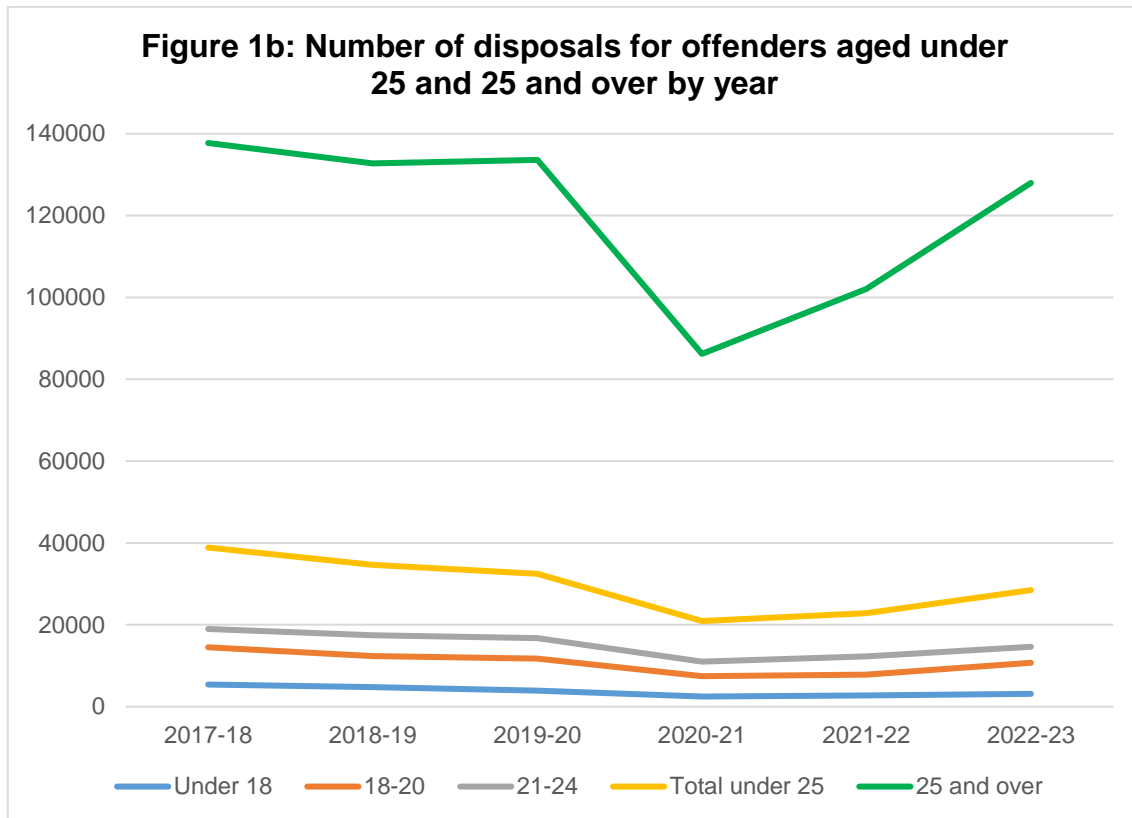
25. A similar pattern can be observed for each age group, with a slight decrease in the number of disposals per year in the years before the Covid-19 pandemic, followed by a sharp decline in 2020-21 as court volumes decreased during the height of the pandemic. There is then a slight increase in the number of disposals in 2021-22 followed by a more significant increase in 2022-23 during the post-Covid-19 recovery programme.

26. **Table 1b**, below, provides a breakdown of the number of disposals per year for those aged 25 and over for the same six year period, as an indicative comparison. This shows a similar pattern as for those aged under 25, with a downward trend followed by a sharp fall as a result of the Covid-19 pandemic, before an increase to a level still below pre-pandemic numbers.

Table 1b: Number of disposals for offenders aged 25 and over by year

Year	Total 25 and over
2017-18	137737
2018-19	132728
2019-20	133619
2020-21	86205
2021-22	102126
2022-23	127993

27. **Figure 1b**, below, gives the number of disposals for offenders aged under 25 and 25 and over by year.



28. The Council did not anticipate that the guideline would have any impact on court volumes. While the different timeframe involved means the data considered here cannot be directly compared to published national statistics covering 01 April to 31 March, the rate of increase appears roughly similar to the rate of increase in concluded trials in 01 April 2022 to 31 March 2023.²⁶ As such, there is no evidence that the guideline is impacting on court volumes.

Offences disposed of by courts²⁷

29. Across the six years considered within this review, offences involving unlawful use of a motor vehicle, breach of the peace, common assault, crimes against public justice,²⁸ dangerous and careless driving, speeding, drugs, and driving under the influence of alcohol or drugs represented eight of the ten crime or offence types associated with the most disposals for

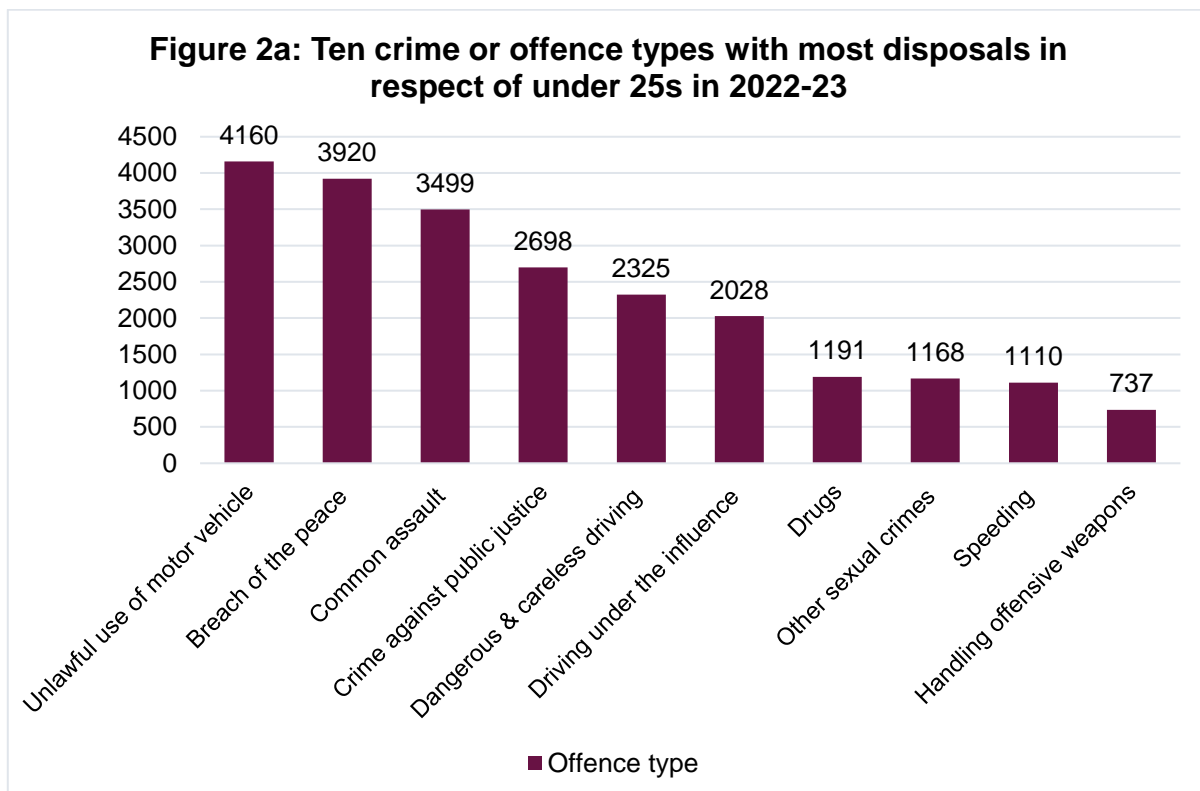
²⁶ Quarterly Criminal Court Statistics, Scottish Courts And Tribunals Service, 2023, <https://www.scotcourts.gov.uk/media/fybl54px/scts-quarterly-criminal-court-statistics-20-bulletin-2022-23-q4.pdf>

²⁷ The categorisation of crime or offence types in this review is based on a previous Scottish Government classification of charge codes into 38 categories. The Scottish Government has now revised this to [50 categories](#), which may mean some of the charge code categories in this review have changed when compared to the latest Scottish Government criminal proceedings data.

²⁸ This includes bail offences other than absconding or re-offending, obstruction of a constable in pursuance of law and duty, failing to appear before trial, breach of order etc.

offenders aged under 25 in **every year**. Offences involving “other sexual crimes”,²⁹ shoplifting, vandalism etc., and handling offensive weapons featured occasionally in the eighth to tenth most commonly disposed crime or offence types. Collectively, these ten crime or offence types were associated with around 80% of all disposals in respect of those aged under 25 in any given year, suggesting that the pattern of offending by young people remains relatively stable.

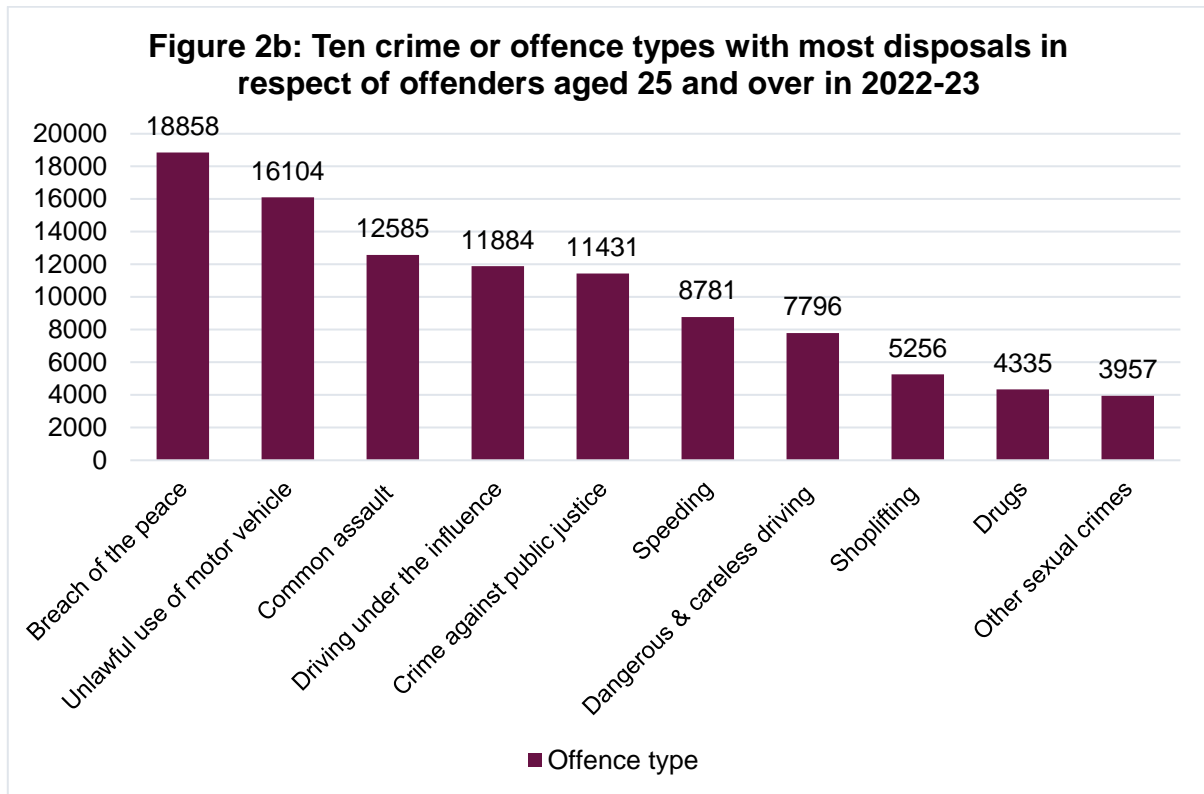
30. **Figure 2a**, below, sets out the ten crime or offence types associated with the most disposals for under 25s in 2022-23.



31. This corresponds with the pattern of offending among offenders aged 25 and over, with breach of the peace, unlawful use of a motor vehicle, common assault, crimes against public justice, dangerous and careless driving, speeding, drugs, and driving under the influence of alcohol or drugs making up nine of the ten crime or offence types with the most disposals every year. “Other sexual crimes” and “other motor vehicle offences” appeared occasionally in the ten most commonly disposed crime or offence types. Collectively, the ten crime or offence types associated with most disposals for offenders aged 25 and over also comprised around 80% of all disposals.

²⁹ This includes causing to view sexual activity (public indecency and sexual exposure), communicating indecently, threatening to disclose or disclosing intimate images, indecent photos of children, crimes associated with prostitution (crimes relating to prostitution, soliciting services of person engaged in prostitution, brothel keeping, immoral traffic, procurement), and other sexual crimes (incest, voyeurism, and administering a substance for sexual purposes). This category may differ from the “Other sexual crimes” category provided in the Scottish Government criminal proceedings data, which provides a more detailed breakdown.

32. **Figure 2b**, below, sets out the ten crime or offence types associated with the most disposals for offenders aged 25 and over in 2022-23.



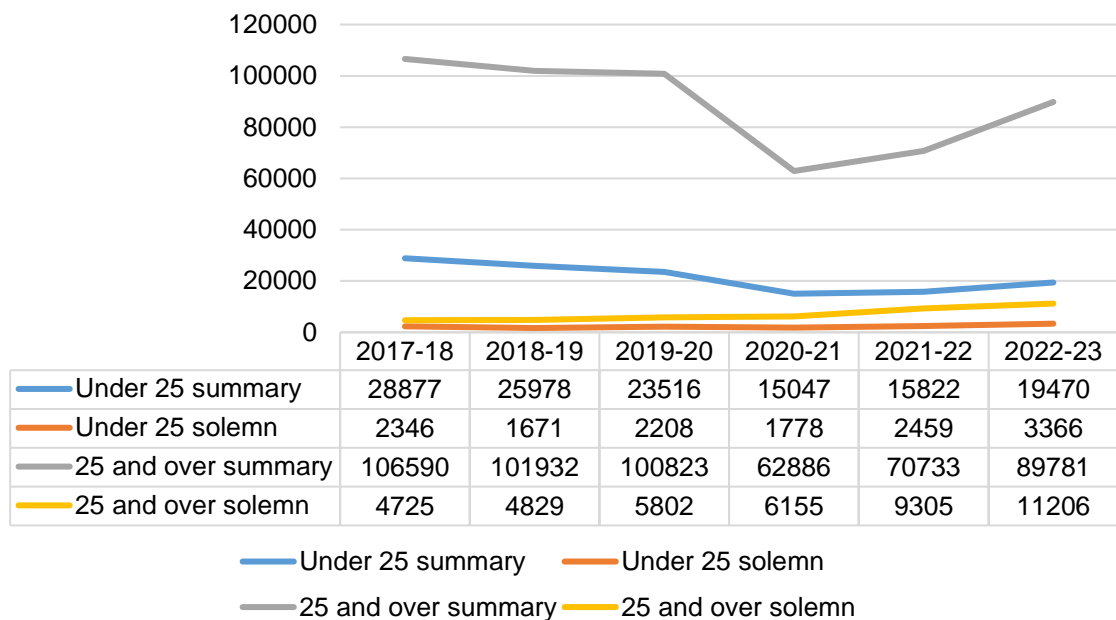
33. Over the six-year period, the vast majority of disposals for under 25s were for summary (less serious) as opposed to solemn (more serious) offences. Of the ten crime or offence types, the percentage of solemn offences has gradually risen during the six-year period. This is also in line with the data for offenders aged 25 and over, with summary offences making up the majority of disposals, but with a gradual increase in solemn offences over the same six-year period.

34. There is no evidence, therefore, of change in the nature of offences disposed of by courts in respect of those under 25 since the introduction of the guideline.

35. **Figure 3**, below, provides a breakdown of the number of summary and solemn offences out of the ten crime or offence types associated with the most disposals in respect of offenders aged under 25 and aged 25 and over during in each year of the six-year period covered by this review.³⁰

³⁰ It should be noted that the figures in figure 3 are based on the ten most commonly disposed crime or offence types *overall* in each year, rather than the ten most commonly disposed summary crime or offence types and ten most commonly disposed solemn crime or offence types in each year.

Figure 3: Number of ten most commonly disposed of crime or offence types in respect of offenders aged under 25 and 25 and over by year, split by summary and solemn offences



36. **Table 3**, below, provides the total number of all solemn and summary offences for offenders aged under 25 and 25 and over during the six-year period, split by year and as a percentage of all disposals.

Table 3: Number of solemn and summary offences for offenders aged under 25 and aged 25 and over by year, and as a percentage of all disposals

Year	Under 25		25 and over	
	Summary	Solemn	Summary	Solemn
2017-18	34428 (88.5%)	4458 (11.5%)	123224 (89.5%)	14513 (10.5%)
2018-19	30559 (88.2%)	4081 (11.8%)	117923 (88.8%)	14805 (11.2%)
2019-20	28223 (87%)	4231 (13%)	117122 (87.7%)	16497 (12.3%)
2020-21	18087 (86.4%)	2838 (13.6%)	75365 (87.4%)	10840 (12.6%)
2021-22	18925 (82.8%)	3922 (17.2%)	85247 (83.5%)	16879 (16.5%)
2022-23	23478 (82.5%)	4983 (17.5%)	107804 (84.2%)	20189 (15.8%)

Types of disposal by year

37. **Table 4a**,³¹ below, provides a breakdown of the number of specific disposals per year (running from 26 January to 25 January) for under 25s, split by age groups for the five years immediately preceding the introduction of the guideline, as well as the year following the

³¹ In this table, "CPO" means community payback order and "RLO" means restriction of liberty order.

introduction of the guideline. The “Custody” category includes life sentences, extended sentences of imprisonment, orders for lifelong restriction (OLRs), determinate sentences of imprisonment, and sentences of detention in a young offenders institution.³² The “Other disposal” category includes all other disposals, such as DVLA licence endorsements, which represent over half of these disposals; ancillary orders, such as protection of vulnerable groups scheme disposals and Sexual Offences Act 2003 certifications (the latter are technically not disposals or ancillary orders as they automatically follow a conviction for certain offences, but are recorded as part of the disposal process on the case management system used by SCTS), each representing about 5% of the other disposals group; as well as less common disposals such as orders under the Dangerous Dogs Act 1991 and mental health disposals.³³ These other disposals are usually given in addition to one or more of the disposals detailed in the table.

³² Under s207 of the [Criminal Procedure \(Scotland\) Act 1995](#), offenders under the age of 21 who receive a custodial sentence are detained in a young offenders institution (YOI) rather than being sentenced to imprisonment. In August 2024 – outwith the period covered by this review – certain provisions in the Children (Care and Justice) (Scotland) Act 2024 were commenced which mean under 18s are now detained in secure care rather than YOIs.

³³ This means mental health disposals such as a compulsion order or hospital direction made after conviction, and does not include mental health disposals made pre-conviction or after a finding that the accused is not criminally responsible or unfit for trial.

Table 4a: Number of disposals for under 25s by type, year and age group, and percentages of all disposals

	Custody	CPO	RLO	Fine	Admonition	Absolute discharge	Other disposal	Total
Under 18								
2017-18	534 (9.9%)	1421 (26.3%)	287 (5.3%)	585 (10.8%)	1146 (21.2%)	46 (0.9%)	1382 (25.6%)	5401 (100%)
2018-19	528 (11%)	1292 (27%)	282 (5.9%)	467 (9.8%)	1026 (21.5%)	43 (0.9%)	1143 (23.9%)	4781 (100%)
2019-20	332 (8.4%)	1080 (27.5%)	281 (7.2%)	368 (9.4%)	905 (23%)	30 (0.8%)	934 (23.8%)	3930 (100%)
2020-21	163 (6.6%)	565 (22.9%)	158 (6.4%)	260 (10.5%)	645 (26.1%)	18 (0.7%)	663 (26.8%)	2472 (100%)
2021-22	133 (4.9%)	675 (24.8%)	174 (6.4%)	315 (11.6%)	654 (24%)	27 (1%)	742 (27.3%)	2720 (100%)
2022-23	169 (5.4%)	633 (20.4%)	154 (5%)	335 (10.8%)	704 (22.7%)	37 (1.2%)	1075 (34.6%)	3107 (100%)
18-20								
2017-18	1565 (10.8%)	2775 (19.1%)	534 (3.7%)	3180 (21.9%)	2303 (15.9%)	76 (0.5%)	4074 (28.1%)	14507 (100%)
2018-19	1302 (10.5%)	2334 (18.9%)	527 (4.3%)	2694 (21.8%)	1977 (16%)	59 (0.5%)	3478 (28.1%)	12371 (100%)
2019-20	1169 (9.9%)	2472 (21%)	493 (4.2%)	2467 (21%)	1743 (14.8%)	60 (0.5%)	3362 (28.6%)	11766 (100%)
2020-21	648 (8.7%)	1397 (18.8%)	423 (5.7%)	1568 (21%)	1350 (18.1%)	37 (0.5%)	2027 (27.2%)	7450 (100%)
2021-22	625 (8%)	1510 (19.3%)	419 (5.4%)	1569 (20%)	1238 (15.8%)	50 (0.6%)	2416 (30.9%)	7827 (100%)
2022-23	723 (6.8%)	1883 (17.6%)	496 (4.6%)	2123 (19.9%)	1652 (15.5%)	69 (0.6%)	3744 (35%)	10690 (100%)
21-24								
2017-18	2410 (12.7%)	3059 (16.1%)	532 (2.8%)	5008 (26.4%)	2324 (12.2%)	76 (0.4%)	5569 (29.3%)	18978 (100%)
2018-19	2455 (14%)	2590 (14.8%)	535 (3.1%)	4332 (24.8%)	2255 (12.9%)	51 (0.3%)	5270 (30.1%)	17488 (100%)
2019-20	1967 (11.7%)	2926 (17.5%)	682 (4.1%)	3996 (23.8%)	1957 (11.7%)	55 (0.3%)	5175 (30.9%)	16758 (100%)
2020-21	1457 (13.2%)	1656 (15.1%)	487 (4.4%)	2489 (22.6%)	1412 (12.8%)	31 (0.3%)	3471 (31.5%)	11003 (100%)
2021-22	1509 (12.3%)	1956 (15.9%)	560 (4.6%)	2617 (21.3%)	1459 (11.9%)	18 (0.1%)	4181 (34%)	12300 (100%)
2022-23	1119 (7.6%)	2379 (16.2%)	638 (4.4%)	3460 (23.6%)	1647 (11.2%)	58 (0.4%)	5363 (36.6%)	14664 (100%)
All under 25								
2017-18	4509 (11.6%)	7255 (18.7%)	1353 (3.5%)	8773 (22.6%)	5773 (14.8%)	198 (0.5%)	11025 (28.4%)	38886 (100%)
2018-19	4285 (12.4%)	6216 (17.9%)	1344 (3.9%)	7493 (21.6%)	5258 (15.2%)	153 (0.4%)	9891 (28.6%)	34640 (100%)
2019-20	3468 (10.7%)	6478 (20%)	1456 (4.5%)	6831 (21%)	4605 (14.2%)	145 (0.4%)	9471 (29.2%)	32454 (100%)
2020-21	2268 (10.8%)	3618 (17.3%)	1068 (5.1%)	4317 (20.6%)	3407 (16.3%)	86 (0.4%)	6161 (29.4%)	20925 (100%)
2021-22	2267 (9.9%)	4141 (18.1%)	1153 (5%)	4501 (19.7%)	3351 (14.7%)	95 (0.4%)	7339 (32.1%)	22847 (100%)
2022-23	2011 (7.1%)	4895 (17.2%)	1288 (4.5%)	5918 (20.8%)	4003 (14.1%)	164 (0.6%)	10182 (35.8%)	28461 (100%)

38. The Council anticipated that the guideline would have the greatest effect on sentencing decisions for offenders in the 21-24 age group, as those aged under 21 were already subject to a specific presumption against custody,³⁴ and the guideline's approach reflected established practice with regards to under 21s.³⁵ The Council expected that the guideline's introduction would lead to a greater emphasis on rehabilitation for 21-24 year olds and a possible change to sentencing practice as a result.³⁶
39. Within the 21-24 age group, there is a noticeable drop in custody rates in 2022-23, both in absolute numbers – down to 1119 from 1509 – and in terms of custody as a proportion of total disposals – down to 7.6% of all disposals from 12.3%. While absolute numbers of custodial disposals in the 21-24 age group broadly decreased over the five years preceding the introduction of the guideline, the percentage of all disposals involving custody over that period fluctuated between 11.7% and 14%. As such, the percentage of custodial disposals in 2022-23 appears to be outwith the previous range. This indicates a potential correlation with introduction of the guideline, but a causal link cannot be established based on this data alone. The degree to which this change could be attributed to the guideline is also uncertain given that the year in question involved the post-Covid-19 recovery programme. This may influence the year on year comparison as more serious cases were prioritised during the pandemic, which may have resulted in an increased number of less serious cases being dealt with during the latter period of recovery, although increases in the mean average duration of custodial sentences in the High Court for offenders aged under 25 (as well as for those aged 25 and over) during 2022-23 indicate the picture is more complicated. However, it does seem plausible that some degree of shift in sentencing outcomes could be ascribed to the introduction of the guideline. This is in line with the Council's assessment of likely scenarios. Further data gathering and analysis, including qualitative discussions with sentencers and practitioners and additional quantitative data, may provide more detail on the extent of any impact at the three-year review stage.
40. The rate of custodial disposals for 18-20 year olds also shows a drop when considered as a percentage of total disposals, albeit noticeably less pronounced, down to 6.8% in 2022-23 from 8% in 2021-22. This decrease is of the same magnitude as the decrease in custodial disposals between 2019-20 and 2020-21 and seems broadly in line with the trend over previous years. Unlike for the 21-24 age group, there is an *increase* in absolute numbers of custodial disposals in the most recent year. The confounding factors of the Covid-19 pandemic and the extension of PASS in the preceding years makes drawing any conclusions around the impact of the

³⁴ s207(3), [Criminal Procedure \(Scotland\) Act 1995](#). There is also a presumption against imposing a sentence of imprisonment on a person aged 21 or over who has not previously served a custodial sentence, unless the court considers that no other sentence is appropriate – this is set out at [s204\(2\) of the 1995 Act](#).

³⁵ [Sentencing young people impact assessment](#), paragraphs 16-17.

³⁶ *Ibid*, paragraph 13.

guideline on custodial rates for 18-20 year olds impossible at this time. Further exploration of this point at the three-year review stage may be more informative.

41. The rate of custodial disposals for under 18s increased, both in absolute numbers and percentage terms, in 2022-23. However, given the small number of these disposals annually for this age group, it would be unsafe to draw any conclusions from this.
42. The figures for all age ranges under 25 suggest that there is a downward trend in custody rates overall, although the extent of the trend appears to be greater for those aged 21-24, potentially indicating an impact from introduction of the guideline.
43. Rates of custody for offenders under the age of 25 differ between the High Court and the sheriff court, with a greater percentage of disposals in the High Court being custodial, reflecting the fact that the High Court deals with the most serious cases. However, the pattern of change in custody rates between 2021-22 and 2022-23 is similar in each court, with drops in custody rates in each. While the custody rates in each court are at the lowest rate in 2022-23 in the six-year period, apart from for under 18s, the year on year drop is similar to previous years, with a more pronounced trend for 21-24 year olds. It is not possible to draw any conclusions about the impact of the guideline with regard to court forum.
44. The rate of CPO disposals for 21-24 year olds has increased in both absolute and percentage terms, from 1956 (15.9%) in 2021-22 to 2379 (16.2%) in 2022-23. This stands in contrast to both the 18-20 year old and under 18 groups, where the rate of these disposals fell in percentage terms in 2022-23. While it is possible this represents 21-24 year old offenders receiving a CPO rather than a sentence of custody, the impact of the Covid-19 pandemic on community-based sentencing in the preceding two years makes this impossible to say with certainty.
45. The rates of RLOs, fines, admonitions, and absolute discharges in each age group (under 18, 18-20, 21-24) appear to be within the scope of previous years, with the possible exception of the rate of admonitions for 21-24 year olds, which was at its lowest rate in 2022-23. Over the six year period covered by this review, admonitions for 21-24 year olds were lower in percentage terms than for all other age groups, including the 25 and over group (see **table 4b**), in each year apart from 2018-19, when the rate for those aged 25 and over was slightly lower. It does not appear that the guideline has had a noticeable impact on the use of these disposals.
46. **Table 4b**, below, provides a breakdown of the number of specific disposals per year (running from 26 January to 25 January) for offenders aged 25 and over for the purposes of comparison.

Table 4b: Number of disposals for offenders aged 25 and over by type and year, and as percentages of all disposals

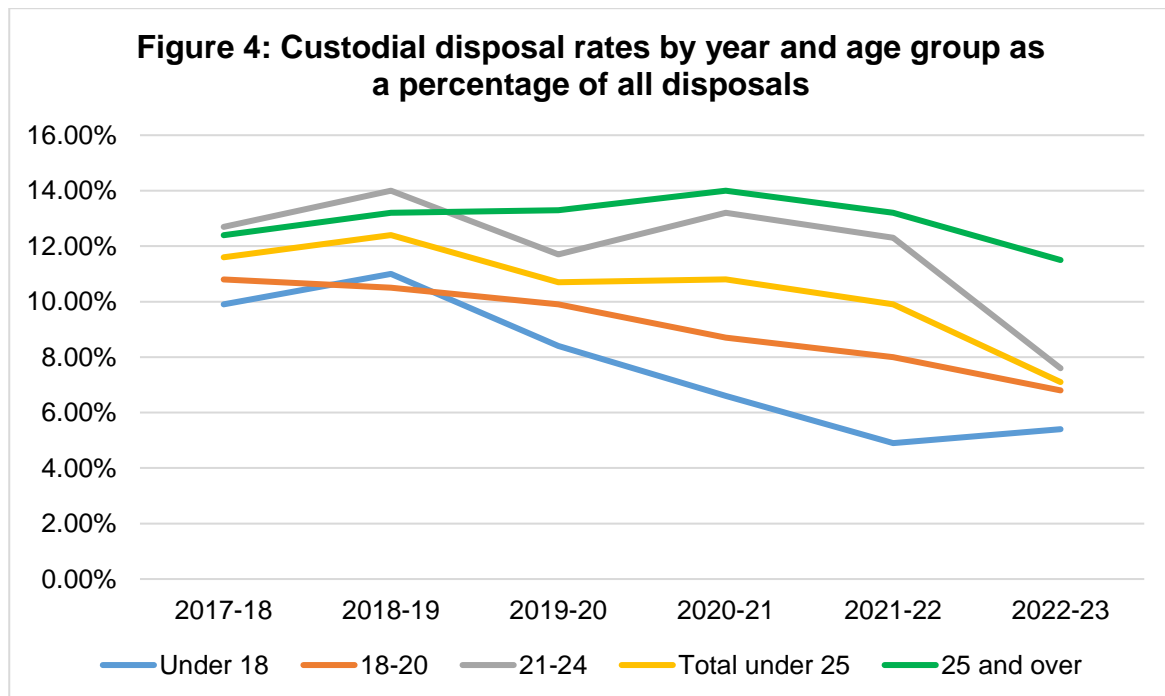
Year	Custody	CPO	RLO	Fine	Admonition	Absolute discharge	Other disposal	Total
2017-18	17039 (12.4%)	17389 (12.6%)	2966 (2.2%)	38416 (27.9%)	17191 (12.5%)	353 (0.2%)	44383 (32.2%)	137737 (100%)
2018-19	17506 (13.2%)	15956 (12%)	3292 (2.5%)	35942 (27.1%)	16552 (12.5%)	320 (0.2%)	43160 (32.5%)	132728 (100%)
2019-20	17766 (13.3%)	18053 (13.5%)	4119 (3.1%)	33674 (25.2%)	15975 (12%)	269 (0.2%)	43763 (32.8%)	133619 (100%)
2020-21	12102 (14%)	11164 (13%)	3406 (4%)	20146 (23.4%)	12079 (14%)	205 (0.2%)	27103 (31.4%)	86205 (100%)
2021-22	13480 (13.2%)	13918 (13.6%)	4397 (4.3%)	22815 (22.3%)	12333 (12.1%)	237 (0.2%)	34980 (34.2%)	102126 (100%)
2022-23	14703 (11.5%)	17263 (13.5%)	4467 (3.5%)	29411 (23%)	15187 (11.9%)	298 (0.2%)	46664 (36.5%)	127993 (100%)

Note: as with the data for under 25s, the “Other disposal” category includes all other disposals, such as DVLA licence endorsements, which represent over half of these disposals; ancillary orders such as protection of vulnerable groups scheme disposals and Sexual Offences Act 2003 certifications (the latter are technically not disposals or ancillary orders as they automatically follow a conviction for certain offences, but are recorded as part of the disposal process on the case management system used by SCTS), each representing about 5% of the other disposals group; as well as less common disposals such as orders under the Dangerous Dogs Act 1991 and mental health disposals. These other disposals are usually given in addition to one or more of the disposals detailed in the table.

47. As with under 25s, custodial rates for the 25 and over group also show a decline over the last year of the six-year period considered, falling from 13.2% of all disposals in 2021-22 to 11.5% in 2022-23. The absolute number of custodial disposals for offenders aged 25 and over in 2022-23 is down to 14703 from a peak of 17766 in 2019-20. However, some of this decline is likely to be due to the Covid-19 pandemic. As previously noted, cases of a higher level of seriousness were prioritised during the pandemic, which is likely to have resulted in an increased number of less serious cases being dealt with during the recovery period. This may be supported by the fact that the number of custodial disposals for those aged 25 and over increased from 13480 in 2021-22 to 14703 in 2022-23. Over the six-year period, the custodial rate for offenders aged 25 and over has fluctuated between 12.4% in 2017-18 to a high of 14% in 2020-21, before dropping to its lowest point of 11.5% in 2022-23. Similar to the position with under 25s, custody rates for those aged 25 and over in both the High Court and sheriff court were found to be lower in 2022-23 than in 2021-22.
48. Over the six-year period covered by this review, custodial rates for 21-24 year olds were lower than those for offenders aged 25 and over in each year, apart from 2017-18 and 2018-19, when they were slightly higher. No conclusions can be drawn from this in relation to the impact of the guideline.
49. In each of the six years covered by this review, the rates of CPOs, RLOs, admonitions, and absolute discharges for those aged 25 and over were lower in percentage terms than for under 25s as a whole, while the rates of fines were higher. Comparison of the 21-24 age group with those aged 25 and over in percentage terms shows a more nuanced picture: rates of fines for 21-24 year olds were slightly higher than for those aged 25 and over in 2022-23; as noted above, rates of admonitions for 21-24 year olds were lower in each year apart from 2018-19; and rates of absolute discharges were slightly lower for 21-24 year olds in 2021-22. Again, no conclusions can be reached from this regarding the impact of the guideline; however, there are indications that courts were taking a different approach to the sentencing of under 25s in the five years prior to the guideline's introduction.
50. **Table 5** and **figure 4**, below, provide a breakdown of custodial disposal rates by year and age group, including under 25s and those aged 25 and over.

Table 5: Custodial disposal rates by year and age group as a percentage of all disposals

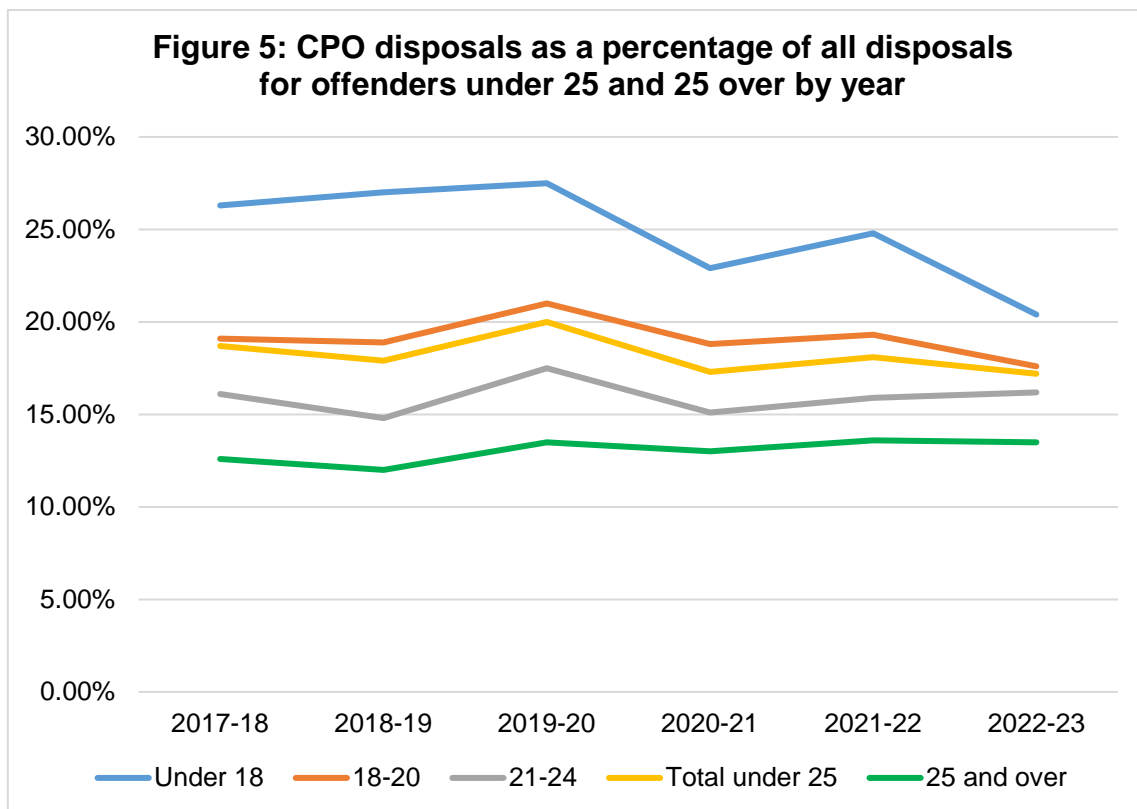
Year	Custodial rates under 25s	Custodial rates 25 and over
2017-18	11.6%	12.4%
2018-19	12.4%	13.2%
2019-20	10.7%	13.3%
2020-21	10.8%	14%
2021-22	9.9%	13.2%
2022-23	7.1%	11.5%



51. For offenders aged 25 and over, the number of CPO disposals overall was lower in percentage terms than for those under 25 – and for each age group (under 18, 18-20, 21-24) – in each of the six years covered by this review, as is shown by the data in **tables 4a and 4b** above. For ease of comparison, **table 6**, below, provides a breakdown of the number of CPO disposals for offenders under 25 and 25 over by year, and as percentages of all disposals, while **figure 5**, also below, provides a breakdown of CPO disposals as percentages of all disposals. The data may indicate a different approach to the sentencing of under 25s by the courts compared to those aged 25 and over in the five years before the introduction of the guideline.

Table 6: Number of CPO disposals for offenders under 25 and 25 over by year, and as percentages of all disposals

Year	No. of CPOs and as % of all disposals (under 25)	No. of CPOs and as % of all disposals (25 and over)
2017-18	7255 (18.7%)	17389 (12.6%)
2018-19	6216 (17.9%)	15956 (12%)
2019-20	6478 (20%)	18053 (13.5%)
2020-21	3618 (17.3%)	11164 (13%)
2021-22	4141 (18.1%)	13918 (13.6%)
2022-23	4895 (17.2%)	17263 (13.5%)



Average custodial disposal length

52. **Table 7a**, below, provides the mean average duration, in days, of sentences of imprisonment or sentences of detention in a young offenders institution, by year and age group. This excludes extended sentences due to challenges in distinguishing the custodial term from the extension period in the available dataset, as well as life sentences and OLRs, due to the complexities of interpreting the punishment part of those sentences for this purpose. The potential impact of the Covid-19 pandemic on the duration of custodial sentences should be

borne in mind, given that it is likely that more serious cases were prioritised in that period. All figures are rounded to the nearest whole day.

Table 7a: Mean average duration of custodial disposals for under 25s, by year and age group

Note: figures are rounded to the nearest whole day and exclude extended sentences, life sentences, and OLRs

Year	Under 18	18-20	21-24	Total under 25
2017-18	209	254	280	262
2018-19	247	238	267	256
2019-20	209	332	328	317
2020-21	220	227	264	251
2021-22	206	267	316	297
2022-23	265	277	292	284

53. For 18-20 and 21-24 year olds, the mean average duration of custodial sentences in 2022-23 sits towards the mid-point of the mean average durations from the preceding five years. For 18-20 year olds, the mean average duration increased slightly, while for 21-24 year olds it fell slightly. For both age groups, however, the mean average duration of custodial sentences shows a significant degree of variation over the six years with no consistent pattern being apparent. No conclusions on the impact of the guideline can be drawn at this stage.

54. For under 18s, the mean average duration of custodial sentences in 2022-23 is at its highest point in the six years under consideration. However, the small number of disposals in this category means this figure may be more prone to sudden shifts based on a few cases. The average duration over previous years also shows significant fluctuation. As with other age groups, no conclusions on the impact of the guideline can be reached at this stage.

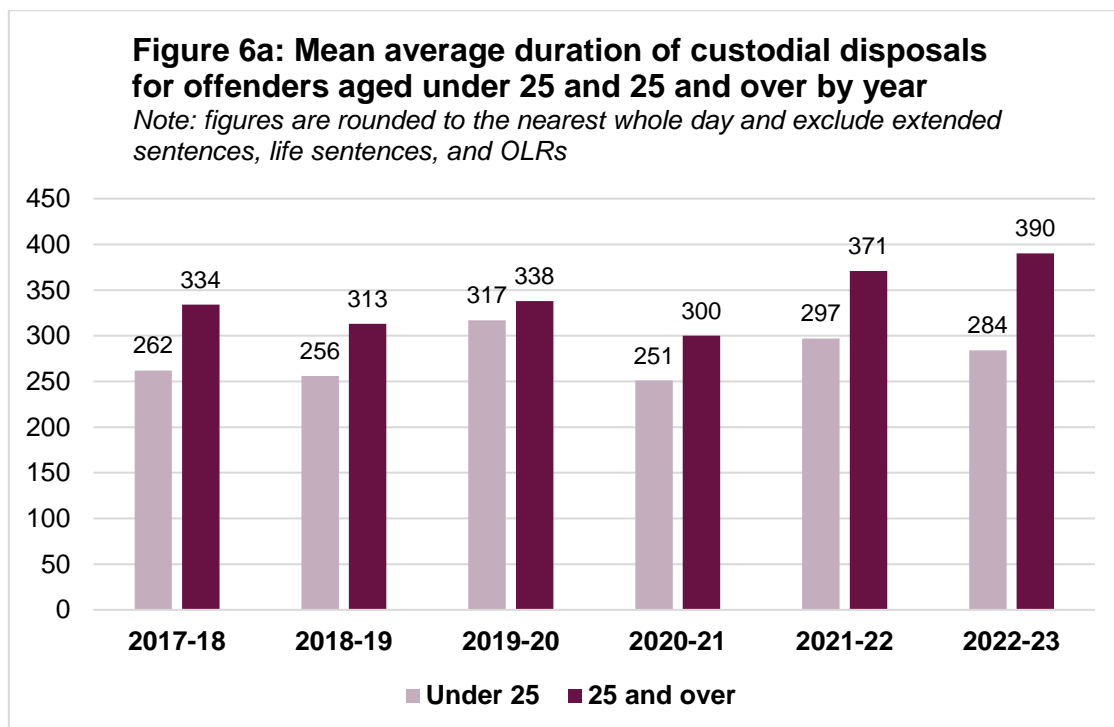
55. **Table 7b**, below, provides the mean average duration, in days, of custodial sentences for offenders aged 25 and over, excluding extended sentences, life sentences, and orders of lifelong restriction. This shows a broadly similar pattern to the rates of imprisonment and detention for under 25s, although it is worth noting that custodial rates for offenders aged 25 and over were higher than those for under 25s (as a whole) in each of the six years covered by this review. This may indicate that courts were already taking a different approach to the sentencing of under 25s in the five years before the introduction of the guideline, but firm conclusions cannot be reached and comparisons of data on under 25s with data on those aged 25 and over should be made with caution.

Table 7b: Mean average duration of custodial disposals for offenders aged 25 and over by year

Note: figures are rounded to the nearest whole day and exclude extended sentences, life sentences, and OLRs

Year	Mean average duration of custody in days (25 and over)
2017-18	334
2018-19	313
2019-20	338
2020-21	300
2021-22	371
2022-23	390

56. For ease of comparison, **figure 6a**, below, provides a breakdown of the mean average duration, in days, of custodial sentences for offenders aged under 25 and 25 and over by year, excluding extended sentences, life sentences, and OLRs.



57. In each of the six years covered by this review, the mean average duration of custodial sentences for solemn offences (excluding extended sentences, life sentences, and orders of lifelong restriction) was also higher for offenders aged 25 and over compared to under 25s in both the sheriff court and the High Court, as is shown by **figures 6b and 6c** below.

Figure 6b: Mean average duration of custodial disposals for sheriff court solemn offences for offenders aged under 25 and 25 and over by year

Note: figures are rounded to the nearest whole day and exclude extended sentences, life sentences, and OLRs

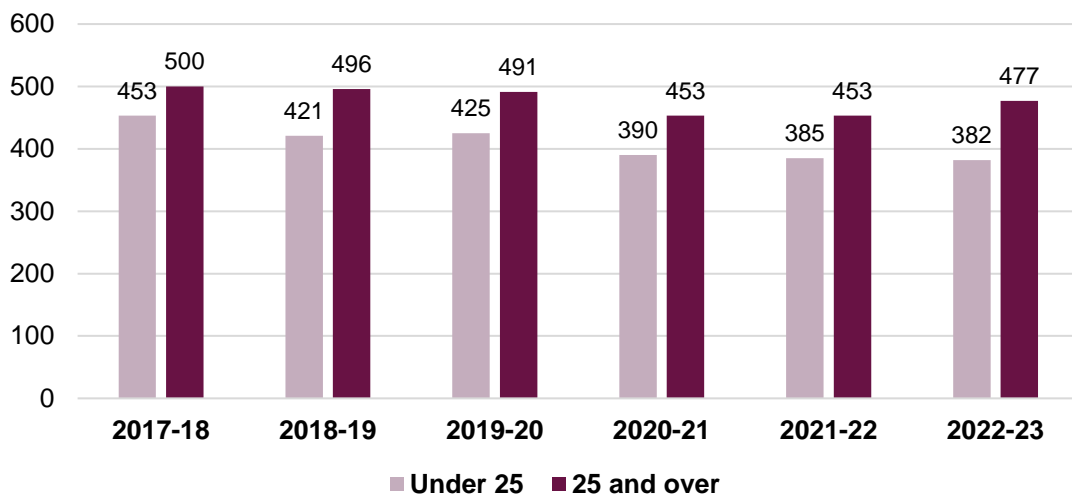
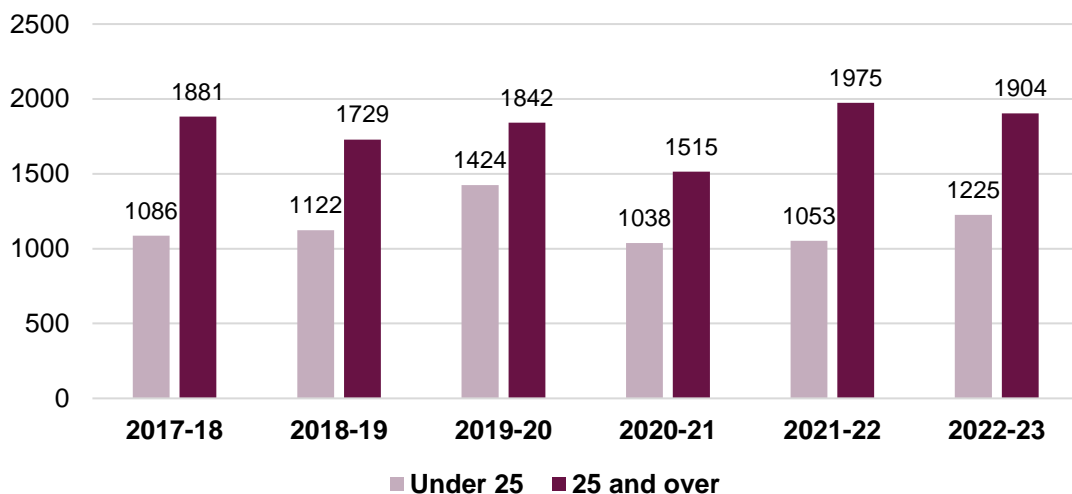


Figure 6c: Mean average duration of custodial disposals in the High Court for offenders aged under 25 and 25 and over by year

Note: figures are rounded to the nearest whole day and exclude extended sentences, life sentences, and OLRs



58. In respect of sheriff court solemn offences for both the under 25 and 25 and over age groups, there has been a steady drop in the mean average duration of custodial sentences since 2017-18, although there was a slight reversal of this trend in 2022-23 for offenders aged 25 and over.

59. In the High Court, no consistent pattern is evident across the six year period for either age group. However, in 2022-23, the year the guideline came into force, there was an *increase* in the mean average duration of custodial sentences imposed on under 25s.

Community payback orders with and without unpaid work requirements

60. **Table 8a**, below, provides a breakdown of the number of CPO disposals, by year and age group, split by number of unpaid work hours required. The number of unpaid work hours that may be specified in a CPO must be at least 20 and not more than 300.³⁷

³⁷ s227I, [Criminal Procedure \(Scotland\) Act 1995](#). Where there is no requirement for unpaid work hours, the CPO will impose one or more of the following requirements: supervision by a social worker (which must be imposed where the offender is under 18 and/or where any of the following requirements are imposed); an order to pay compensation to any victim(s); an order to attend programmes which address offending behaviour and/or drug/alcohol issues; an order to stay at a certain place of residence; an order to undergo treatment for mental health, drug, or alcohol issues; an order to do, or refrain from doing, specified things; and/or an order restricting the offender's movement, such as that they must remain at a specific address for up to 12 hours a day, and/or stay away from a specific address for up to 24 hours a day.

Table 8a: Number of CPO disposals for under 25s by year and age group, split by number of unpaid hours required, and as a percentage of all disposals

Age group	20-100 hours	101-200 hours	201-300 hours	No unpaid hours
Under 18				
2017-18	407 (7.5%)	467 (8.6%)	61 (1.1%)	486 (9%)
2018-19	342 (7.2%)	395 (8.3%)	75 (1.6%)	480 (10%)
2019-20	239 (6.1%)	329 (8.4%)	87 (2.2%)	425 (10.8%)
2020-21	150 (6.1%)	130 (5.3%)	37 (1.5%)	248 (10%)
2021-22	115 (4.2%)	168 (6.2%)	65 (2.4%)	327 (12%)
2022-23	146 (4.7%)	199 (6.4%)	63 (2%)	225 (7.2%)
18-20				
2017-18	925 (6.4%)	903 (6.2%)	243 (1.7%)	704 (4.9%)
2018-19	663 (5.4%)	815 (6.6%)	250 (2%)	606 (4.9%)
2019-20	752 (6.4%)	840 (7.1%)	214 (1.8%)	666 (5.7%)
2020-21	368 (4.9%)	388 (5.2%)	121 (1.6%)	520 (7%)
2021-22	349 (4.5%)	482 (6.2%)	104 (1.3%)	575 (7.3%)
2022-23	482 (4.5%)	642 (6%)	161 (1.5%)	598 (5.6%)
21-24				
2017-18	994 (5.2%)	1053 (5.5%)	338 (1.8%)	674 (3.6%)
2018-19	787 (4.5%)	866 (5%)	245 (1.4%)	692 (4%)
2019-20	847 (5.1%)	966 (5.8%)	390 (2.3%)	723 (4.3%)
2020-21	431 (3.9%)	506 (4.6%)	148 (1.3%)	571 (5.2%)
2021-22	469 (3.8%)	611 (5%)	186 (1.5%)	690 (5.6%)
2022-23	630 (4.3%)	775 (5.3%)	233 (1.6%)	741 (5.1%)
All under 25				
2017-18	2326 (6%)	2423 (6.2%)	642 (1.7%)	1864 (4.8%)
2018-19	1792 (5.2%)	2076 (6%)	570 (1.6%)	1778 (5.1%)
2019-20	1838 (5.7%)	2135 (6.6%)	691 (2.1%)	1814 (5.6%)
2020-21	949 (4.5%)	1024 (4.9%)	306 (1.5%)	1339 (6.4%)
2021-22	933 (4.1%)	1261 (5.5%)	355 (1.6%)	1592 (7%)
2022-23	1258 (4.4%)	1616 (5.7%)	457 (1.6%)	1564 (5.5%)

61. For all age groups under 25, the use of CPO disposals with no unpaid work hours decreased in percentage terms in 2022-23. This may be a consequence of the pandemic, as the percentage rate of these disposals was highest in 2020-21 and 2021-22 (except for under 18s, where 2019-20 showed a higher rate of no unpaid hours CPO disposals than 2020-21). The rates of 18-20 and 21-24 year olds who received no unpaid work hours CPOs in 2022-23 were closer to pre-pandemic levels. The rate for under 18s, however, was lower in 2022-23 than previous years. Again, given the small numbers involved in this age group, it is not possible to be certain whether this reflects a substantive change in practice or a random fluctuation.
62. For 18-20 and 21-24 year olds, rates of CPO disposals with unpaid work hours appear to be returning to similar percentage rates as before the pandemic across all categories (20-100 hours, 101-200 hours, and 201-300 hours). Given the known impact of the pandemic on community based sentences (see the reference to the reduction in unpaid work hours as a result of [The Community Orders \(Coronavirus\) \(Scotland\) Regulations 2021](#) discussed at footnote 24 on page 14 above), it is not possible to be certain whether this reflects just pandemic recovery, or if any other systemic changes have happened. Further exploration of this point will be needed at the three-year review mark.
63. For under 18s only, the 201-300 hours rate shows signs of returning to pre-pandemic levels of use, with the rates of other groups remaining below pre-pandemic levels. As with custodial disposals and the no unpaid hours category, the small number of disposals in this group, coupled with possible pandemic impacts, makes it impossible to state whether this is a substantive change or a statistical artefact.
64. For comparison, **table 8b**, below, provides a breakdown of the number of CPO disposals for offenders aged 25 and over by year, split by number of unpaid work hours required.

Table 8b: Number of CPO disposals for offenders aged 25 and over by year, split by number of unpaid hours required, and as a percentage of all disposals

Year	20-100 hours	101-200 hours	201-300 hours	No unpaid hours
2017-18	4911 (3.6%)	5548 (4%)	1545 (1.1%)	5385 (3.9%)
2018-19	4189 (3.2%)	4796 (3.6%)	1646 (1.2%)	5325 (4%)
2019-20	4461 (3.3%)	5487 (4.1%)	1784 (1.3%)	6321 (4.7%)
2020-21	2566 (3%)	3106 (3.6%)	757 (0.9%)	4735 (5.5%)
2021-22	2990 (2.9%)	3809 (3.7%)	1048 (1%)	6071 (5.9%)
2022-23	4204 (3.3%)	5192 (4.1%)	1417 (1.1%)	6450 (5%)

65. The trends in the use of CPO disposals both with unpaid work hours and with no unpaid work hours appear broadly similar for those aged 25 and over compared to those aged 18-20 and 21-24.

66. Based on the data available, it is not possible to state with any confidence whether or not the guideline has had an effect on CPOs at this stage.

Fine value

67. **Table 9a**, below, provides the mean average value of fines imposed, in pounds, by year and age group.³⁸ All figures are rounded to the nearest whole pound.

Table 9a: Average fine imposed for under 25s, by year and age group (rounded to the nearest pound)

Year	Under 18	18-20	21-24	Total
2017-18	£ 222	£ 253	£ 257	£ 253
2018-19	£ 236	£ 257	£ 257	£ 256
2019-20	£ 247	£ 258	£ 261	£ 259
2020-21	£ 227	£ 268	£ 275	£ 270
2021-22	£ 233	£ 282	£ 290	£ 283
2022-23	£ 263	£ 280	£ 295	£ 288

68. Overall, average fine values show a slow, but steady, increase over time – possibly attributable to inflation, but there may also be other causes. Average fine values were also lower for under 18s in each of the six years reviewed compared to those for 18-20 year olds, which were in turn slightly lower than for 21-24 year olds, apart from in 2018-19 where the average values (£257) were the same. There does not appear to be any impact as a result of the guideline. For comparison, **table 9b**, below, provides average fine values for those aged 25 and over.

³⁸ Most fines include a victim surcharge element. Data on victim surcharge elements were not available for consideration in this review but the Courts Data Scotland: Fines publication has some data on them - see <https://www.scotcourts.gov.uk/about-us/official-statistics/>.

Table 9b: Average fine imposed for offenders aged 25 and over, by year (rounded to the nearest pound)

Year	Average fine (25 and over)
2017-18	£ 254
2018-19	£ 256
2019-20	£ 259
2020-21	£ 277
2021-22	£ 279
2022-23	£ 286

69. The data on average fine values for offenders aged 25 and over also show a slow, but steady increase over time. Average fine values in each of the six years, apart from 2020-21, were lower than those for 21-24 year olds, but it is not possible to reach any conclusions from this about the impact of the guideline.

Appeals

70. As previously noted, SCTS uses a live operational case management system for the processing of court business. The information held on the system regarding appeals is structured for these operational needs, rather than for statistical reporting or research purposes.³⁹ Due to the way appeals data are captured, only age at the time of the appeal is available, rather than age at the time of conviction. This means that the appeals data analysed for this review concern offenders who were aged up to 25½ at the time of the appeal, in order to capture those who were under 25 when convicted but 25 at the time of the appeal, and to whom the guideline would therefore most likely have applied when sentenced. Data on the outcome of appeals (including on appeals that were abandoned) were not available and therefore not considered as part of this review.

71. **Table 10**, below, sets out the number and type of appeals involving offenders aged up to 25½ over the six year period covered by this review.

³⁹ The data are on appeals relating to sentence – that is, appeals by the offender against sentence, appeals by the offender against conviction and sentence, and appeals by the Crown (i.e. the prosecutor) on the grounds that the sentence is unduly lenient. In order to allow for consideration of as comprehensive a dataset as possible, data on appeals by the Crown have been provided by the Crown Office and Procurator Fiscal Service and are set out in table 10. All other appeals data have been provided by SCTS.

Table 10: Number and type of appeals involving offenders aged up to 25½ by year

Year	Appeal against conviction and sentence	Appeal against sentence	Appeal against sentence - Crown	Stated case against conviction and sentence	Total
2017-18	17	166	0	8	191
2018-19	22	177	1	7	207
2019-20	30	163	1	7	201
2020-21	9	66	1	2	78
2021-22	13	90	1	3	107
2022-23	10	53	1	2	66

72. As this table shows, there was a pronounced decline in the overall number of appeals lodged in 2020-21 compared to the three preceding years, which would appear to be largely attributable to the impact of the Covid-19 pandemic. While there was an increase in 2021-22, perhaps as a result of the Covid-19 recovery programme, the number of appeals in 2022-23 remained significantly below pre-pandemic levels. There is no noticeable evidence of the guideline having an impact on the volume of appeals during the year 2022-23. Further longitudinal data are needed to determine whether, and if so how, the implementation of the guideline might influence appeals.

Conclusion

73. This review of the operation of the ‘Sentencing young people’ guideline between 26 January 2022 and 25 January 2023 has found no evidence from the available sentencing and appeals data that the guideline had any unintended consequences during that time.
74. The only apparent impact which can be attributed to the guideline at this stage, based on the data available, is a drop in custody rates within the 21-24 age group which was noticeably more pronounced compared to the drops that occurred in respect of all other age groups – under 18s, 18-20 year olds, and those aged 25 and over. The degree to which this can be attributed to the guideline is uncertain given that the year in question involved the post-Covid-19 recovery programme. It seems plausible that some degree of shift in sentencing outcomes for 21-24 year olds could be ascribed to the introduction of the guideline, but further analysis, incorporating both quantitative and qualitative data, will be carried out at the three-year review stage, using a mixed-methods approach.
75. In all other respects there was either no evidence, or insufficient evidence, of an impact resulting from the introduction of the guideline. Some evidence suggests, however, that courts were in fact already approaching the sentencing of those under 25 differently during the five years preceding the introduction of the guideline. This might indicate that the guideline reflects pre-existing sentencing practice to a degree, particularly in respect of those aged 21-24, rather than setting out a new approach, although this conclusion should be treated with caution.
76. In closing, it is important to reiterate that the findings of this review should be considered preliminary to a degree, as a one-year timeframe does not allow for the collation of the comprehensive range of data – quantitative and qualitative – necessary to reach robust conclusions. This review, as was noted in the introduction, can only provide a snapshot. A more complete picture will begin to emerge at the three-year review stage, to which the Council is now turning its attention.

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