

ACS Submission: Sentencing Council Theft Offences Guidelines Consultation

ACS (the Association of Convenience Stores) welcomes the opportunity to respond to the Sentencing Council's consultation on theft offences. Retail crime is the largest operational challenge facing convenience retailers; they can be exposed on a daily basis to varying degrees of 'low level' shop theft offences to organised theft. ACS is keen to challenge the perception that shop theft and associated offences are victimless, when in fact they have a very serious impact on retailers' businesses and their staff.

ACS' Crime Report 2014 highlights that shop theft in 2013 cost the convenience sector an estimated £44¹ million, a very significant cost to the sector. Overall shop theft accounts for 50% of the total cost of retail crime against all UK retailers, currently £1.6 billion². We have highlighted to the Ministry of Justice our concerns about the prevalence of out of court disposals for dealing with shop theft offences³. The justice system's response to these offences must be robust. We welcome the Sentencing Council decision to review existing theft guidance and look beyond the just the monetary implications of shop theft offences such as emotional distress and fear and loss of confidence.

Retailers are exposed to a number of other crimes addressed in the consultation such as staff theft or theft in breach of trust, going equipped for theft or burglary and for fuel retailers making off without payment. Theft by employees or breach of trust issues are often overlooked but have serious implication for retailers as the activity may go on for some time and amount to damaging sums of money. Our evidence shows that last year the average cost for employee theft was £680⁴ per incident. The Home Office data⁵ also shows that the wholesale and retail sector suffered disproportionately from employee theft accounting for 53% of all incidents of employee theft across four sectors.

'Drive offs' from fuel sites and 'no means of payments' incidents are also a significant problem, exacerbated by the increasing cost of fuel. 'Drive offs' cost forecourt retailers an estimated £17 million in 2013 and 'no means of payment' cost an estimated £11 million⁶. New guidance has been issued to police forces to support the prosecution offenders who repeatedly claim no means of payment⁷ – such offences should be directly addressed and accounted for in the sentencing guidelines.

In terms of 'going equipped' for theft and burglary there are also significant costs for the convenience sector – on average a burglary costs £2,586 per incident and an overall cost

¹ ACS Crime Report 2014

² BRC Crime Survey 2014

³ ACS Submission: Out of Court Disposals Review

⁴ ACS Crime Report 2014

⁵ Home Commercial Victimization Survey 2013

⁶ ACS Crime Report 2014 – figures based on there being 8,377 forecourt sites in the UK.

⁷ [Daily Telegraph: Legal loophole closed to prosecute persistent fuel thieves](#)

£17.8 million in 2013 – the second largest cost after shop theft.⁸ There has been a significant increase in tobacco related burglaries as the price of tobacco products increases.

ACS has responded to the relevant consultation questions below:

SHOP THEFT

Do you agree with the proposed factors within these 3 categories? If not, please tell us why.

ACS supports the proposed factors with-in the three categories highlighted in the consultation document. This approach builds on previous sentencing guidelines. ACS suggests the inclusion of 'repeat victimisation' in the higher or medium culpability ranges, as many retailers are victims of persistent offenders. This should work across all kindred offences, for example if an individual had been the source of repeated anti-social behaviour and then escalates to stealing from the store this, should be accounted for in the categories.

We recommend that the 'stealing goods to order' reference in the guidelines be expanded to encompass 'stealing goods for resale'. The targeting of certain products by repeat offenders is because of their easy resale value for example alcohol, meat and cheese. This show some form of pre planning and a clear pattern of behaviour in their offending.

We value the reference to banning letters in the high culpability element of the guidelines but want to highlight to the Council that there is currently limited take up of banning letters. Banning letters have been an effective method of reducing repeat offenders but only when enforced by the police. Many police forces will no longer deliver banning letters to offenders. This maybe an issue for the council to raise with the police during their deliberations of the new gudielines.

Do you think the financial amounts in the three categories are set at levels which will assist sentencers?

Setting realistic starting points for financial loss for theft offences is very difficult given the wide range of offence types and levels that are included. Statistics on the average cost of stock taken from shops varies greatly; the BRC estimate average stock loss at £177 per incident⁹, ACS' estimates £131 per incident¹⁰ and the Sentencing Advisory Panel suggests the average value of goods stolen was £88¹¹. The average is not a good basis for determining the starting point for one an offence has impact.

While retailers understand the overall shrinkage from their business, it is not always clear if this is from internal, or external theft or processing errors. The detection and reporting rate of a lower value offence will naturally be much less, hence why the average cost levels are likely to be much higher. For convenience retailers the reality is that the value of stock lost is likely to be significantly lower than the £125 starting point proposed in the consultation. The sentencing council should consider reducing the starting point level to at least £100 to align

⁸ ACS Crime Report - This figure included damage the premise which in the majority of cases is likely to outweigh the cost of the stock lost.

⁹ BRC Crime Survey 2013

¹⁰ ACS Crime Report 2014

¹¹ [Sentencing Advisory Panel 2006](#)

with the starting point for out of court penalties as set out in the Ministry of Justice guidance.¹²

ACS would like to reiterate concerns about the introduction of police prosecutions for shop theft up to the value of £200. We are concerned that this reinforces the view that shop theft is a victimless crime when offenders do not have to attend court until their offences accumulate over £200 – for a convenience store this represents a significant amount of stock loss. ACS highlighted its concerns about these measures during the Anti-Social Behaviour Crime and Policing bill and supported amendments¹³ to the Bill.

Is the wording at harm B clear? Is it clear how the additional harm should be considered?

The wording of harm B is clear for magistrates to determine further harm. ACS and BRC supported the development of a pro forma business impact statement to support business' set out the wider impact of crime on a business¹⁴. The form includes reference to reputational damage, physical injuries sustained by staff or customers, loss of custom, impact on consumer confidence, staff time, expenditure on security measures (e.g. physical infrastructure, IT), medical expenses and costs of contractual staff. While it would be impossible to create an exhaustive list in the sentencing guidelines we believe it would be valuable to add a reference to 'repeat victimisation' into the list for harm B. This would account for when offenders repeatedly target a particular store or member of staff to steal from.

There are also often issues with the identification and definition of small businesses during the assessment of harm. In the convenience sector the majority of stores are run under what we call 'symbol groups' such as Spar, Costcutter, Budgens, Londis, Nisa. These are, in the majority of cases, run by independent retailers with an agreement with the wholesaler group to stock some of their products (not a franchisee model) but it may be assumed by magistrates that these are larger businesses. A clearer definition of what is determined as a small business should be asserted in the sentencing guidelines.

Do you agree with the proposed approach to the treatment of previous convictions? If you do not agree, please tell us why.

Retailers are especially frustrated where persistent offenders within the community are not held to account for the harm they cause locally. Retailers often report that known offenders go to court and receive minor community orders or sanctions despite a collection of out of court disposals and a history of criminal activity.

The sentencing guidelines should be absolutely clear about the assessment of previous convictions. The council should either include the assessment at the outset in the culpability factors or directly include them in the aggravating factors list. Although the paragraph between the sentencing levels table and list of aggravating/mitigating factors is strong it must form part of the mandatory assessment.

¹² [Penalty Notices for Disorder Guidance July 2013](#)

¹³ [ACS Written Evidence to the ASB Crime and Policing Bill 2013](#)

¹⁴ [Police.uk - Business Impact Statements](#)

The council makes reference to having two sentencing tables, one for offenders with no previous convictions and one for offenders with previous convictions. The idea is dismissed as cumbersome but ACS recommends that the council should revisit this option. For retailers the impact of first time offenders is limited compared with persistent and experienced shop thieves, therefore we would argue that a separate sentencing table for previous convictions is justifiable.

Given the changes made to the management of shop theft offence through police led prosecutions, this will mean more offences will be brought before the court therefore a more forensic assessment of previous convictions and disposals is necessary. The earlier interventions can be made to prevent a pattern of shop lifting behaviour, the better.

Do you agree with the proposed aggravating factors for theft from a shop or stall? If not please specify which you would add or remove and why.

ACS supports the approach to aggravating factors.

Do you agree with the principle of treating prevalence as an aggravating factor? If not, please tell us how else you think this issue could be reflected within the guideline.

As above, we would like see prevalence issues dealt with at earlier stage in the sentencing process so that persistent offenders receive higher penalties.

Are there any other mitigating factors which are not listed here which you think should be? Please tell us any others you think should be included and why.

ACS supports the listed mitigating factors.

BREACH OF TRUST

Breach of trust issues can be very costly to convenience retailers with employees taking small amounts of money or stock from the business for a long period of time.

Q13: Do you agree that a single guideline is appropriate for general theft offences? If not, please tell us why not, including any other options for grouping these offences together.

ACS supports the single set of sentencing guidelines for assessing general theft issues including breach of trust issues.

Q14: Do you agree with the proposed factors within these three categories? If not, please tell us why.

ACS supports the categories set out in the consultation. Further clarification could be required on the high degree of trust aggravating element, for example in a convenience store all staff are likely to have the ability to operate tills and basic cash handling but this should not exclude them from breaching a high degree of trust.

Q15: Do you agree the financial amounts in the four categories are set at levels which will assist sentencers? If not, please suggest alternatives and reasons why you believe these will provide greater assistance.

The average cost per incident for shop theft offences from our evidence is £680 so we believe the starting points in the guidance matches the experience of retailers and will broadly encompass all internal theft issues.

Q16: Is the wording at harm B clear? Is it clear what the impact of additional harm can have?

Yes.

Q17: Do you agree with the proposed aggravating and mitigating factors for general theft? If not, please specify which you would add or remove and why.

The cost of employment means that all convenience retailers will require their staff to be able to operate tills and therefore have access to cash. This should not mean that employees receive lesser sentences because of the 'Inappropriate degree of trust or responsibility' mitigating factor.

MAKING OFF WITHOUT PAYMENT

Q29: Do you agree that making off without payment should be contained within its own guideline? If not, please state why and where you think guidance for this offence would best be placed.

ACS welcomes the separation of making off without payment offences. As the price of fuel has increased, and is likely to continue to do so, there has been an increasing trend of 'drive offs' and 'non-payment' issues. ACS' Crime Report estimates that 'drive offs' costs forecourt retailers £17 million and 'no means of payment' costs £11 million in 2013.

Q30: Do you agree with the list of culpability factors? If not, please tell us why.

ACS supports the culpability factors laid out in the consultation. The large number of victims factored and targeting of vulnerable victims are particularly relevant for non means of payments on forecourt. Guidance has recently changed to account for offenders targeting a number of fuel sites claiming inability to pay, moreover they are likely to target independents that may not have Automatic Number Plate Recognition (ANPR).

Q31: Do you think the financial amounts in the two categories are set at levels which will assist sentencers? If not, please suggest alternatives which you think may give greater assistance.

Yes.

Q32: Is the wording at harm B clear? Is it clear what impact additional harm can have?

Yes.

Q33: Do you agree with the proposed aggravating and mitigating factors? If not please specify which you would add or remove and why.

Yes.

GOING EQUIPPED FOR THEFT OR BURGLARY

Q42: Do you agree with the culpability factors?

Yes.

Q43: Do you agree with the proposed one stage approach to the assessment of harm?

Yes, the broad range of the one stage approach is necessary. ACS recognised that it is very difficult to assess the level of damage and operational disruption that burglary can cause to a store based on the equipment an offender is carrying.

For example there has been an increase in the targeting of tobacco products because of their high value but this require very little in terms of specialist equipment.

Q44: Do you agree with the greater and lesser harm factors? Are there any other factors which you think should be included?

Yes.

Q45: Do you agree with the proposed aggravating and mitigating factors? If not please specify which you would add or remove and why.

Yes.

For further information on this submission please contact Edward Woodall, ACS Public Affairs Manager, Edward.woodall@acs.org.uk or 01252 533014.