

Bladed Articles and Offensive Weapons Guideline Consultation

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Published on 6 October 2016

The consultation will end on 6 January 2017

A consultation produced by the Sentencing Council.

This information is also available on the Sentencing Council's website:

www.sentencingcouncil.org.uk

About this consultation

To:

This consultation is open to everyone including members of the public, judiciary, legal practitioners and any individuals who work in or have an interest in criminal justice.

Duration:

From 6 October 2016 to 6 January 2017

Enquiries (including requests for the paper in an alternative format) to:

Office of the Sentencing Council

Royal Courts of Justice

(full address as below)

Tel: 020 7071 5793

Email: info@sentencingcouncil.gsi.gov.uk

How to respond:

Please send your response by 6 January 2017 to:

Vicky Hunt

Office of the Sentencing Council

Room EB20

Royal Courts of Justice

Strand

London WC2A 2LL

DX: 44450 RCJ/Strand

Tel: 020 7071 5793

Email: consultation@sentencingcouncil.gsi.gov.uk

Additional ways to feed in your views:

This consultation exercise is accompanied by a resource assessment, and an online questionnaire, all of which can be found at:

www.sentencingcouncil.org.uk

A series of consultation meetings is also taking place. For further information please use the “Enquiries” contact details above.

Response paper:

Following the conclusion of this consultation exercise, a response will be published at:

www.sentencingcouncil.org.uk

Freedom of Information:

We will treat all responses as public documents in accordance with the Freedom of Information Act and we may attribute comments and include a list of all respondents’ names in any final report we publish.

If you wish to submit a confidential response, you should contact us before sending the response.

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Introduction

What is the Sentencing Council?

The Sentencing Council is the independent body responsible for developing sentencing guidelines for the courts to use when passing a sentence. Part of the Council's remit¹ is to conduct public consultations on guidelines for the sentencing of offenders.

Why bladed articles and offensive weapons?

Courts see a relatively high number of bladed article and offensive weapon cases come before them. In 2015 there were approximately 7,800 adult offenders sentenced for these offences, around 66 per cent were dealt with in magistrates' courts, and 34 per cent in the Crown Court. In the same time period there were 1,400 young offenders sentenced.²

There is some existing guidance for adult offenders being sentenced in the magistrates' court, but no guidance for adult offenders being sentenced in the Crown Court, or for young offenders.

In magistrates' courts the existing guidance; *Possession of bladed article/offensive weapon*, was produced by the Sentencing Guidelines Council (SGC), and is contained within the *Magistrates' Court Sentencing Guidelines* (MCSG). This guideline was produced in August 2008 alongside an additional note *Sentencing for possession of a weapon – knife crime* which was produced to be read with the guideline. The additional note draws a distinction between offences involving a knife and those involving other weapons, and refers to the judgment in *R v Povey*³ which recommended that when sentencing an offender for an offence involving a knife the MCSG guideline should normally be applied at the most severe end of the appropriate range to reflect prevalence concerns.

Since the development of the MCSG guideline in 2008, a number of new offences have been introduced (those offences listed below with an asterisk), many of which are subject to mandatory minimum sentences (those offences listed below with a double asterisk). These new offences are not covered by any guidance.

The new guideline will provide sentencers across the Crown Court, magistrates' courts and youth courts with guidance for all of the offences listed below, which will assist in achieving the Council's objective of consistent sentencing, and provide transparency for the public regarding the possible penalties for these offences.

¹ ss.118–136 Coroners and Justice Act 2009

² Source: Court Proceedings Database, Ministry of Justice. For details of data collection and methodology please see <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2015>

The figures shown relate to persons for whom these offences were the principal offences for which they were dealt with. When a defendant has been found guilty of two or more offences it is the offence for which the heaviest penalty is imposed. Where the same disposal is imposed for two or more offences, the offence selected is the offence for which the statutory maximum penalty is the most severe.

Every effort is made to ensure that the figures presented are accurate and complete. However, it is important to note that these data have been extracted from large administrative data systems generated by the courts and police forces. As a consequence, care should be taken to ensure data collection processes and their inevitable limitations are taken into account when those data are used.

³ [2008] EWCA Crim 1261

Which offences are covered by the guideline?

The new bladed article and offensive weapons guideline will contain guidance for:

- Possession of an offensive weapon in a public place
- Possession of an article with a blade/point in a public place
- Possession of an offensive weapon on school premises*
- Possession of an article with a blade/point on school premises*
- Unauthorised possession in prison of a knife or offensive weapon* (adult guideline only)
- Threatening with an offensive weapon in a public place**
- Threatening with an article with a blade/point in a public place**
- Threatening with an article with a blade/point on school premises**
- Threatening with an offensive weapon on school premises**

What is the Council consulting about?

The Council has produced this consultation paper in order to seek views from as many people as possible interested in the sentencing of bladed article and offensive weapon offences.

However, it is important to clarify that the Council is consulting on sentencing these offences and not the legislation upon which such offences are based. The relevant legislation is a matter for Parliament and is, therefore, outside the scope of this exercise.

Through this consultation process, the Council is seeking views on:

- the principal factors that make any of the offences included within the draft guideline more or less serious;
- the additional factors that should influence the sentence;
- the approach taken to structuring the draft guidelines;
- the types and lengths of sentence that should be passed;
- the approach taken to the youth guideline; and
- anything else you think should be considered.

A summary of the consultation questions can be found at Annex A.

What else is happening as part of the consultation process?

This is a 13 week public consultation. During the consultation period, the Council will host a number of consultation meetings to seek views from groups with an interest in this area as well as with sentencers. Once the consultation exercise is over and the results considered, a final guideline will be published and used by all courts.

Alongside this consultation paper, the Council has produced an online questionnaire. The Council has also produced resource assessments for both the adult and youth guidelines. The online questionnaire and resource assessments can be found on the Sentencing Council's website:

www.sentencingcouncil.org.uk

Section one: Overarching issues and the context of the guidelines

This consultation seeks views on three guidelines; possession of a bladed article/offensive weapon; threatening with a bladed article/offensive weapon, and a youth guideline which covers all offences involving bladed articles and offensive weapons.

The principal pieces of legislation for the main offences are the Prevention of Crime Act 1953 and the Criminal Justice Act 1988. In addition the adult guideline covers the offence of unauthorised possession of a knife or offensive weapon in prison which is governed by the Prison Act 1952.

There has been growing concern over recent years about the number of people carrying knives and other weapons on the streets. As Sir Igor Judge (as he then was) said in *R v Povey*:

“Carrying a knife or an offensive weapon without reasonable excuse is a crime which is being committed far too often by far too many people. Every weapon carried about the streets, even if concealed from sight, even if not likely to be or intended to be used, and even if not used represents a threat to public safety and public order. That is because even if concealed, even if carried only for bravado, or from some misguided sense that its use in possible self-defence might arise, it takes but a moment of irritation, drunkenness, anger, perceived insult or something utterly trivial, like a look, for the weapon to be produced. Then we have mayhem and offences of the greatest possible seriousness follow, including murder, manslaughter, grievous bodily harm, wounding and assault. All those offences have victims.”

Since 2008 there have been a number of new offences introduced which highlight Parliament’s concern about offences of this kind. The new offences are; possession of bladed articles/offensive weapons on school premises or in prisons; and the offences of threatening with a bladed article/offensive weapon in a public place or on school premises. Legislation has also been amended to provide that any offender convicted of a second or further offence will be subject to a mandatory minimum sentence of 6 months for an adult and 4 months’ Detention and Training Order for a youth. The new *threats* offences carry a mandatory minimum sentence of the same length.

Applicability of guidelines

In accordance with section 120 of the Coroners and Justice Act 2009, the Sentencing Council issues these draft guidelines. Following consultation, when the adult definitive guidelines are produced they will apply to all offenders aged 18 and older, who are sentenced on or after the implementation date, regardless of the date of the offence. The separate youth guideline will apply to all offenders aged under 18 who are sentenced on or after the date that the guideline comes into force, regardless of the date of the offence.

Section 125(1) Coroners and Justice Act 2009 provides that when sentencing offences committed after 6 April 2010:

“Every court -

- (a) must, in sentencing an offender, follow any sentencing guideline which is relevant to the offender’s case, and
- (b) must, in exercising any other function relating to the sentencing of offenders, follow any sentencing guidelines which are relevant to the exercise of the function, unless the court is satisfied that it would be contrary to the interests of justice to do so.”

Structure, ranges and starting points

For the purposes of section 125(3)–(4) of the Coroners and Justice Act 2009, the adult guidelines specify offence ranges – the range of sentences appropriate for each type of offence. For each offence, the Council has specified a number of categories which reflect varying degrees of seriousness. The offence range is split into category ranges – sentences appropriate for each level of seriousness. The Council has also identified a starting point within each category.

Starting points define the position within a category range from which to start calculating the provisional sentence. As in earlier Sentencing Council definitive guidelines, this guideline adopts an offence-based starting point. Starting points apply to all offences within the corresponding category and are applicable to all offenders, in all cases. Once the starting point is established, the court should consider further aggravating and mitigating factors and previous convictions so as to adjust the sentence within the range. Starting points and ranges apply to all offenders, whether they have pleaded guilty or been convicted after trial. Credit for a guilty plea is taken into consideration only at step four in the decision-making process, after the appropriate sentence has been identified.

The youth guideline follows a different structure to the adult guidelines, and does not include starting points or ranges. Instead the structure provides a step-by-step decision-making process for the court to use when sentencing this type of offence. Its main aim is to assist sentencers to reach a decision about whether the case before them crosses the custodial threshold. This structured approach will ensure that all sentencers adopt a consistent approach to sentencing across England and Wales.

The guideline in relation to current practice and existing guidelines

In preparing both the adult and youth draft guidelines, the Council has had regard to the purposes of sentencing and to its statutory duties. The Council’s aim throughout has been to ensure that all sentences are proportionate to the offence committed and in relation to other offences.

The Council considered statistical data from the Ministry of Justice’s Court Proceedings Database for the offences covered in the guideline to get a picture of current sentencing levels. Further information can be found in the Council’s statistical bulletin.

A qualitative research exercise with the judiciary has also been undertaken to explore sentencers’ views on the existing guidelines and their attitudes to sentencing in this area. Further research will be carried out during the consultation period to explore sentencers’ attitudes to the proposed new guidelines.

The aim of the draft guidelines is to ensure that sentence levels reflect the serious social problem of offenders carrying knives, and reflects the judgments in a number of leading Court of Appeal Cases.⁴ This is a similar approach as was adopted in the MCSG guideline, when read alongside the additional note, *Sentencing for possession of a weapon – knife crime*. The structure of the new draft adult *possession* guideline and the fact that it incorporates the key principles set out in case law, may lead to an increase in the sentences received by some offenders for carrying bladed articles or other ‘highly dangerous’ weapons. Further details of this are set out in the Sentencing Council’s resource assessment.

The adult *threats* guideline aims to reflect both the principle set out above, but also the fact that Parliament has set a mandatory minimum sentence for those that use a weapon to threaten. Due to the mandatory minimum, the starting point sentence for any offender charged with this offence must be 6 months. The principle set out above means that, where the weapon used to threaten was a bladed article or ‘highly dangerous’ weapon, the starting point sentence will always be higher than 6 months. The combination of these two principles may lead to an increase in the sentences received by some offenders who threaten using a bladed article or other ‘highly dangerous’ weapon. Again further details are set out in the Sentencing Council’s resource assessment.

4 *R v Povey* [2008] EWCA Crim 1261; *R v Monteiro & Others* [2014] EWCA Crim 747

Section two: Developing the Adult Guidelines

Assessing Seriousness

The guideline sets out a step-by-step decision-making process for the court to use when sentencing each type of offence. This is intended to ensure that all sentencers adopt a consistent approach to sentencing across England and Wales.

The particular circumstances of each offence covered by the draft guideline will be different. The draft guideline aims to help the court to decide how serious an offence is by reference to a series of factors which in turn determine what the sentence starting point should be.

The first two steps that the sentencer follows are about assessing the seriousness of an individual offence. These two steps are described below.

STEP ONE

Determining the offence category

The first step is to consider the principal factors of the offence. These are the factors that the Council considers are the most important in deciding the seriousness of the offence. The offence category reflects the severity of the offence and sets the starting point and range of sentences within which the offender is sentenced. The list of factors at step one is exhaustive.

The draft guideline directs the court to consider the factors relating to the culpability of the offender in committing the offence and the harm that has been caused or intended. In broad terms, culpability relates to the role the offender has played, the level of planning involved and the sophistication with which the offence was carried out, but there are some variations. Some offences may have characteristics which fall into different categories. In these cases culpability is to be assessed by balancing the characteristics and reaching an assessment of the offender's overall culpability.

Harm is assessed in terms of the actual or potential harm caused as a result of the offence.

STEP TWO**Starting point and category range**

Once the court has determined the offence category the next step is to decide upon a provisional sentence using the relevant starting point and category range. It is at this step that the court should consider any adjustments for previous convictions, if appropriate. The court should also consider any relevant aggravating and mitigating factors and the weight that they are to be given. The factors at step two are non exhaustive.

The starting points and ranges in the draft guidelines have been proposed based on a combination of statistical data collected by the Ministry of Justice, the starting points and ranges of the current guidelines, press reports, reported cases and data gathered from the research activities described above. The starting points and ranges have then been tested against reported cases.

Once the court has determined the starting point and taken into account relevant aggravating and mitigating factors they should consider the legislation regarding mandatory minimum sentences if that is appropriate.

STEP THREE**Consider any factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR**Reduction for guilty pleas**

The court should take account of any reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

STEP FIVE**Totality principle**

Where an offender is before the court for more than one offence, the court must consider whether the sentences passed should be consecutive or concurrent. The court must also consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the *Offences Taken into Consideration and Totality* guideline.

STEP SIX
Ancillary orders

The court must proceed with a view to making any ancillary orders that may be relevant.

STEP SEVEN
Reasons

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentences passed.

STEP EIGHT
Consideration for time spent on bail

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

Section three: Developing the Youth Guideline

The youth guideline structure and many of the factors contained within it replicate the draft guidelines for sentencing youths for sexual offences and robbery. At the time of publication, the Council was considering responses to the consultation on these guidelines and any views obtained regarding structure or common factors will also be considered in relation to this draft guideline.

The main aim of this guideline is to assist youth sentencers to decide whether the case before them has crossed the custody threshold. For that reason the provisions on mandatory minimum sentences have been included right at the outset of the guideline, unlike the adult guideline. If the mandatory minimum sentence provisions do apply, and there is nothing indicating that it would be unjust to impose a custodial sentence, then the court can simply move to step two of the guideline.

Where a mandatory minimum sentence does not apply the court should start at step one.

Step one of the guideline is, therefore, applicable when sentencing:

- young offenders under 16 years of age for all offences; and
- young offenders of all ages who are convicted of a *possession* offence for the first time.

Assessing seriousness

The guideline sets out a step-by-step decision-making process for the court to use when sentencing each type of offence. This is intended to ensure that all sentencers are adopting a consistent approach to sentencing across England and Wales.

The particular circumstances of each offence covered by the draft guideline will be different. The draft guideline aims to help the court to decide how serious an offence is by reference to a series of factors.

The first two steps that the court follows are about assessing the seriousness of an individual offence. These two steps are described below.

STEP ONE

Offence Seriousness – Nature of the offence

The first step is to consider the principal factors of the offence. The guideline sets out examples of harm and culpability factors that the Council considers are the most important in deciding the seriousness of the offence.

The guideline directs the court to consider the **offence-specific** factors relating to the culpability of the offender in committing the offence and the harm that has been caused. In considering these factors the court will be able to assess whether a sentencing threshold has been crossed. This is simply a starting point, and the guideline directs that **the fact that a sentence threshold is crossed does not necessarily mean that is the sentence that should be imposed**. This is an important message as sentencing youths is much more focussed on the individual offender than when sentencing an adult, and a court must ensure that all factors, including offender-specific factors, are carefully considered before determining the most appropriate sentence in the case.

STEP TWO

Offence Seriousness – Aggravating and mitigating factors

In order to complete the assessment of seriousness the court must consider the **offence-specific** factors that may aggravate or mitigate the seriousness of the offence.

STEP THREE

Offender mitigation

Step three requires the court to focus upon the **offender** to consider the personal factors that may have played a part in the commission of the offence. The court is reminded that these factors may be sufficient to reduce the sentence from one of custody to a non-custodial sentence or from a community sentence to a different means of disposal.

STEP FOUR

Reduction for guilty pleas

The court should take account of any reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

STEP FIVE

Review the sentence

Finally the court must review the sentence to ensure it is appropriate. The court is required to consider whether the sentence addresses the likelihood of an offender reoffending and the risk of that offender causing serious harm.

Section four: Bladed Articles and Offensive Weapons – Possession (Adult Guideline)

This section considers offences of possession of a bladed article in a public place or on school premises; possession of an offensive weapon in a public place or on school premises and unauthorised possession in prison of a knife or offensive weapon. All of these offences have a statutory maximum of four years' imprisonment. In 2015 there were 7,500 offenders sentenced for possession of a bladed article and offensive weapon offences. Possession offences are by far the more common type of bladed article/offensive weapon offence.

STEP ONE

The first step of the guideline is to consider the culpability level of the offender by the assessment of a series of factors.

Culpability factors

Category A – High culpability

There are three factors that indicate the highest level of culpability:

- Possession of a bladed article whether produced or not
- Possession of a highly dangerous weapon whether produced or not
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity

In the Council's view the possession of a bladed article or highly dangerous weapon indicates a high level of seriousness. The case of *Povey*, discussed earlier, expresses clearly why the presence of a bladed article is of particular concern. However there may also be other highly dangerous weapons, such as a bottle adapted to squirt acid that the court considers indicate similarly high levels of seriousness. For that reason possession of either of these weapons would fall into high culpability, indicating a high degree of seriousness and in some cases a degree of planning (especially in the case of a highly dangerous weapon), intention or recklessness about the harm that could be caused.

The Council has a strong focus on the impact an offence has on the victim which is taken into account in the assessment of harm, but whether a victim was targeted due to inherent factors (for example religion, race or disability) is considered in the assessment of culpability as it may increase the overall seriousness of the offence.

Category B – Medium culpability

Whilst this guideline is about *possession* of a weapon, there will be occasions where an offender has gone beyond simple possession and used the weapon to threaten a person, or attempted to cause them fear. Such behaviour may not be sufficient to amount to a charge under the *threatening* with

a weapon offence (see page 24) but this type of behaviour should be reflected by a higher level of culpability and/or harm as the seriousness is clearly greater than for simple possession.

There is one factor in this category which relates to whether a weapon was used to threaten or cause fear. The factor only relates to weapons other than a knife or a highly dangerous weapon, as possession of one of these types of weapons would always be classed as a high culpability offence.

Category C – Lesser culpability

There are two factors indicating lesser culpability. The first relates to those cases where the offender's possession falls just short of reasonable excuse. This may involve the type of case where an offender is in possession of a knife for his employment, but goes out for the evening after work and keeps that knife in his pocket. Whilst this sort of possession is unlikely to amount to a reasonable excuse, the court may consider that such an offender's culpability is less than an offender who has no good reason for being in possession of a knife and chooses to take one out in public.

The second factor is a 'catch all' factor which provides that if there are no characteristics present that put the case into culpability level A or B then the case should fall within this culpability category.

STEP ONE

Determining the offence category

The court should determine the offence category with reference only to the factors listed in the tables below. In order to determine the category the court should assess **culpability** and **harm**.

The court should weigh all the factors set out below in determining the offender's culpability.

Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

Culpability demonstrated by one or more of the following

A – High culpability	<ul style="list-style-type: none"> • Possession of a bladed article whether produced or not • Possession of a highly dangerous weapon whether produced or not • Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity
B – Medium culpability	<ul style="list-style-type: none"> • Weapon (other than a bladed article or a highly dangerous weapon) used to threaten or cause fear
C – Lesser culpability	<ul style="list-style-type: none"> • Possession of weapon falls just short of reasonable excuse • All other cases where characteristics for categories A or B are not present

Q1

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

Q2

Are there any culpability factors that should be added or removed?

Harm factors

Once the court has determined the level of culpability the next step is to consider the harm caused or intended to be caused by the offence.

Category 1

There are three factors that indicate the highest level of harm:

- Offence committed at a school or other place where vulnerable people may be present
- Offence committed in prison or other premises where there may be a risk of serious disorder
- Serious alarm/distress

The first two factors relate to locations where the risks associated with being in possession of a weapon increase the likelihood of harm. The third category relates to harm caused or intended where others are either aware of the presence of the weapon or where they have been threatened or put in fear.

Category 3

There are two factors that indicate the lowest level of harm:

- Minimal risk of weapon being used to threaten or cause harm
- No/minimal distress

Similar to category 1 these factors are concerned with both risk and actual harm, but capture the least risk or actual harm that could have been caused by the offence.

Harm

The court should consider the factors set out below to determine the level of harm that has been **caused or was intended** to be caused to the victim.

Category 1	<ul style="list-style-type: none"> • Offence committed at a school or other place where vulnerable people may be present • Offence committed in prison or other premises where there may be a risk of serious disorder • Serious alarm/distress
Category 2	<ul style="list-style-type: none"> • Other cases where characteristics for categories 1 or 3 are not present
Category 3	<ul style="list-style-type: none"> • Minimal risk of weapon being used to threaten or cause harm • No/minimal distress

Q3

Do you agree with the proposed approach to the assessment of harm?

Q4

Are there any harm factors that should be added or removed?

STEP TWO

Once the court has determined the culpability and harm categories at step one, the next step is to identify the starting point.

Sentence levels

The starting points and ranges have been based on statistical data from the Court Proceedings Database; analysis of first instance transcripts; analysis of Court of Appeal sentencing remarks, reference to the ranges within the existing MCSG guideline and the guidance provided by the court in *Povey*.

It is, however, important to note that the ranges are not directly comparable with those in the MCSG guideline as the approach to assessing the seriousness of the offence is very different.

STEP TWO**Starting point and category range**

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page.

Harm	Culpability		
	A	B	C
Category 1	Starting point 1 year 6 months' custody	Starting point 9 months' custody	Starting point 3 months' custody
	Category range 1 year's custody – 2 years 6 months' custody	Category range 6 months' custody – 1 year 6 months' custody	Category range High level community order – 6 months' custody
Category 2	Starting point 9 months' custody	Starting point 3 months' custody	Starting point High level community order
	Category range 6 months' custody – 1 year 6 months' custody	Category range High level community order – 6 months' custody	Category range Low level community order – 3 months' custody
Category 3	Starting point 3 months' custody	Starting point High level community order	Starting point Medium level community order
	Category range High level community order – 6 months' custody	Category range Low level community order – 3 months' custody	Category range Band C fine – High level community order

Scenarios illustrating how the guideline is to be used and the resulting sentence ranges are at page 22. Views are sought on whether the sentencing ranges are proportionate.

Q5

Do you have any comments on the sentence ranges and starting points?

The court should then consider any additional factors, not identified at step one, which may aggravate or mitigate the offence.

These factors are included to give the court the opportunity to consider the wider context of the offence and any relevant circumstances relating to the offender. It is at the court's discretion whether to remain at the starting point or to move up or down from it. The presence of any of the factors included within the list does not mean it must be taken into account if the sentencer does not consider it to be significant in the particular case. The court will need to attribute appropriate weight to the factors. These lists are non-exhaustive but are intended to contain the most common factors which provide context to the commission of the particular offence.

Factors increasing seriousness

Statutory aggravating factors:

Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction

Offence committed whilst on bail

Other aggravating factors:

Victim is targeted due to a vulnerability (or a perceived vulnerability)

Offender in a group or gang

Planning

Location of the offence (where not taken into account at step one)

Timing of the offence (where not taken into account at step one)

Attempts to conceal identity (for example, wearing a balaclava or hood)

Offence committed against those working in the public sector or providing a service to the public

Steps taken to prevent the victim reporting or obtaining assistance and/or from assisting or supporting the prosecution

Commission of offence whilst under the influence of alcohol or drugs

Attempts to conceal/dispose of evidence

Established evidence of community/wider impact

Failure to comply with current court orders

Offence committed on licence or post sentence supervision

Offences taken into consideration

Failure to respond to warnings about behaviour

'Previous convictions' and 'offence committed whilst on bail' are factors which the court is required by statute to consider when assessing the seriousness of an offence and their inclusion is therefore not subject to consultation. As with previous guidelines issued by the Council, these factors are considered at step two after the starting point has been established.

The following factors are standard aggravating factors that have been included in other definitive guidelines and which are self explanatory. They are not subject to consultation.

- Commission of offence whilst under the influence of alcohol or drugs
- Attempts to conceal/dispose of evidence
- Established evidence of community/wider impact
- Failure to comply with current court orders
- Offence committed on licence or post sentence supervision
- Offences taken into consideration
- Failure to respond to warnings about behaviour

The factors 'victim is targeted due to a vulnerability (or perceived vulnerability)', and 'steps taken to prevent the victim reporting or obtaining assistance and/or from assisting or supporting the prosecution' are factors that are likely to increase the harmful impact on a victim. Where it does, the sentencer can increase the sentence from the starting point to reflect this.

The factors 'offender in group or gang' and 'planning' both increase the seriousness of the offence as indicators of the offender's criminal intent.

The timing and the location of the offence may make it more serious. These factors do not specify the timing or the location as they are offence-specific. The guideline specifically states that these factors are not to be counted if already counted at step one, so that if an offender has a knife with him whilst on school premises during school hours then this will be considered at step one and should not also be considered again at step two. However, if an offender is brandishing a knife in a park at night and is seen by a member of the public, the timing and location of the offence may make them feel more afraid and vulnerable, and have a worse affect on them, and so should be counted.

'Attempts to conceal identity (for example, wearing a balaclava or hood)' may make the offence more distressing for a victim as well as indicating planning by the offender.

'Offence committed against those working in the public sector or providing a service to the public' is considered to be an aggravating factor where their work has exposed them to the risk of such an offence.

Q6

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

Factors reducing seriousness or reflecting personal mitigationNo previous convictions **or** no relevant/recent convictions

Good character and/or exemplary conduct

Serious medical condition requiring urgent, intensive or long-term treatment

Age and/or lack of maturity where it affects the responsibility of the offender

Mental disorder or learning disability (where not linked to the commission of the offence)

No planning

Sole or primary carer for dependent relatives

Co-operation with the police

There are no statutory mitigating factors. All of the factors included within the draft guideline are commonplace within the definitive guidelines and are not subject to consultation. Sentencers are experienced in applying these criteria and attaching the appropriate weight (if any) to them.

Q7

Are there any mitigating factors that should be added or removed?

Mandatory minimum sentences

Section 28 of and schedule 5 to the Criminal Justice and Courts Act 2015 created a minimum custodial sentence for those convicted of a second or subsequent offence of possession of a bladed article or offensive weapon, contrary to section 1 of the Prevention of Crime Act 1953 or section 139 and 139A of the Criminal Justice Act 1988. A previous conviction for threatening with a bladed article or offensive weapon, contrary to section 1A of the Prevention of Crime Act 1953 or section 139AA of the Criminal Justice Act 1988, counts as a 'first strike'.

Once the court has reached a preliminary decision on sentence based upon the step one and step two factors they should then consider whether the sentence complies with the minimum term provisions (where they apply). If the case is one to which the provisions apply and the preliminary sentence is less than 6 months the court should adjust the sentence unless satisfied that there are circumstances relating to the offence or the offender that make it unjust to do so in all of the circumstances.

Minimum Terms – second or further relevant offence

When sentencing the offences of:

- possession of an offensive weapon in a public place;
- possession of an article with a blade/point in a public place;
- possession of an offensive weapon on school premises; and
- possession of an article with blade/point on school premises

a court must impose a sentence of at least 6 months' imprisonment where this is a second or further relevant offence **unless the court is of the opinion that there are particular circumstances relating to the offence or the offender which make it unjust to do so in all the circumstances.**

A 'relevant offence' includes those offences listed above and the following offences:

- threatening with an offensive weapon in a public place;
- threatening with an article with a blade/point in a public place;
- threatening with an article with a blade/point on school premises; and
- threatening with an offensive weapon on school premises.

Q8

Does the section on minimum sentences (above) provide adequate explanation of the provisions?

Q9

Do you agree that the guidance on minimum sentences is at the right stage of the sentencing process?

Case Study A

D, a 42 year old male was charged with an offence of possession of an offensive weapon. He was caught outside his ex-partner's home, banging on the door and shouting for her to let him in. She was afraid of her ex-partner. She opened the upstairs window and shouted down that she did not want to talk to him, and that he should leave. He continued to bang and shout, so she called the police. The police arrived and told D to move on; he refused and became increasingly aggressive to the extent that he had to be restrained. He was searched and was found to be in possession of a spray bottle containing industrial strength cleaner, which contained sulphuric acid. He was questioned about the bottle and said 'it was for her, to take away that pretty smile from her face'.

D has two previous convictions, one for ABH in 2014 where he received a sentence of 4 months' imprisonment suspended for one year; and one public order offence in 2015 for which he received a 12 month community order which has now expired.

D denied the offence but was convicted after trial.

Step one – Culpability & Harm

The offender was in possession of a highly dangerous weapon.
Serious alarm/distress was intended.

This is an A1 offence with a starting point of 1 year 6 months and a range of 1 year – 2 years 6 months.

Step two – Aggravating & Mitigating Factors

The offender has previous convictions which are both recent and relevant.

The offender has planned the offence, as he has specifically obtained the industrial strength cleaner that is not readily available. He has also transferred the cleaner into a spray bottle.

There are no relevant mitigating factors.

The offender is not subject to the **mandatory minimum terms** as he does not have a relevant previous offence.

At this stage the preliminary sentence is likely to be near the top of the range given the aggravating factors.

Step three – Not relevant**Step four – Reduction for guilty pleas**

D did not plead guilty and so is not entitled to any reduction.

The offender's final sentence is likely to be in the region of 2 years 6 months' custody.

Q10

Do you consider that the sentence imposed in Case Study A is proportionate? If you do not agree, please tell us what sentence should be imposed and why.

Section five: Bladed Articles and Offensive Weapons – Threats (Adult Guideline)

This section considers offences of threatening with an offensive weapon in a public place or on school premises; and threatening with a bladed article in a public place or on school premises. All of these offences have a statutory maximum of four years' imprisonment. In 2015 there were approximately 280 offenders sentenced for these offences.

A person is guilty of this offence if that person –

- (a) has an offensive weapon or article with a blade or point with him or her in a public place or on school premises,
- (b) unlawfully and intentionally threatens another person with the weapon, and
- (c) does so in such a way that there is an immediate risk of serious physical harm to that other person.

For the purposes of this offence 'serious physical harm' is serious if it amounts to Grievous Bodily Harm.

STEP ONE

The first step of the guideline is to consider the culpability level of the offender by the assessment of a series of factors.

The offence, as described above, inherently involves a high degree of culpability and so to identify factors that indicate lower or medium levels of culpability is difficult. For that reason it is proposed that culpability be limited to two levels; one listing factors that indicate higher levels of culpability and a lower culpability category that would capture all other cases.

Culpability factors

Category A – Higher culpability

There are four factors that indicate the higher level of culpability.

- Offence committed using a bladed article.
- Offence committed using a highly dangerous weapon.
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity.
- Significant degree of planning or premeditation.

The first three are similar to those within the draft possession guideline and are discussed at page 15.

‘Significant degree of planning or premeditation’ is included as the offence of threatening with a weapon may involve a degree of sophistication, planning and targeting, and where it does, the Council believes that this indicates a higher level of culpability.

STEP ONE **Determining the offence category**

The court should determine the offence category with reference **only** to the factors listed in the tables below. In order to determine the category the court should assess **culpability** and **harm**.

The court should weigh all the factors set out below in determining the offender’s culpability.

Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender’s culpability.

Culpability demonstrated by one or more of the following

A – Higher culpability

- Offence committed using a bladed article
- Offence committed using a highly dangerous weapon
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity
- Significant degree of planning or premeditation

B – Lower culpability

- All other cases

Q11

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

Q12

Are there any culpability factors that should be added or removed?

Harm factors

Once the court has determined the level of culpability the next step is to consider the harm caused or intended to be caused by the offence.

Category 1

There are four factors that indicate the highest level of harm.

- Prolonged incident.
- Serious alarm/distress.
- Offence committed at a school or other place where vulnerable people may be present
- Offence committed in prison or other premises where there may be a risk of serious disorder.

The first two factors relate to the actual or intended harm caused to a victim. Similar to the possession guideline, the last two factors relate to locations where the risks associated with weapon offences are greatest.

Category 3

There is just one factor indicating a minimal amount of harm.

Harm

The court should consider the factors set out below to determine the level of harm that has been **caused or was intended** to be caused to the victim.

Category 1

- Prolonged incident
- Serious alarm/distress
- Offence committed at a school or other place where vulnerable people may be present
- Offence committed in prison or other premises where there may be a risk of serious disorder

Category 2

- Other cases where characteristics for categories 1 or 3 are not present

Category 3

- Fleeting incident and no/minimal distress

Q13

Do you agree with the proposed approach to the assessment of harm?

Q14

Are there any harm factors that should be added or removed?

STEP TWO

Once the court has determined the culpability and harm categories at step one, the next step is to identify the starting point.

Sentence levels

The starting points and ranges have been based on statistical data from the Court Proceedings Database; analysis of first instance transcripts; analysis of Court of Appeal sentencing remarks and reference to the ranges within the draft *possession* guideline.

STEP TWO**Starting point and category range**

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page.

Harm	Culpability	
	A	B
Category 1	Starting point 2 years' custody	Starting point 1 year 6 months' custody
	Category range 1 year 6 months' custody – 3 years' custody	Category range 1 year's custody – 2 years' custody
Category 2	Starting point 1 year 6 months' custody	Starting point 1 year's custody
	Category range 1 year's custody – 2 years' custody	Category range 9 months' custody – 1 year 6 months' custody
Category 3	Starting point 1 year's custody	Starting point 9 months' custody
	Category range 9 months' custody – 1 year 6 months' custody	Category range 6 months' custody – 1 year's custody

Scenarios illustrating how the guideline is to be used and the resulting sentence ranges are at page 29. Views are sought on whether the sentencing ranges are proportionate.

Q15

Do you have any comments on the sentence ranges and starting points?

The court should then consider any additional factors, not identified at step one, which may aggravate or mitigate the offence.

These factors are included to give the court the opportunity to consider the wider context of the offence and any relevant circumstances relating to the offender. It is at the court's discretion whether to remain at the starting point or to move up or down from it. The presence of any of the factors included within the list does not mean it must be taken into account if the sentencer does not consider it to be significant in the particular case. The court will need to attribute appropriate weight to the factors. These lists are non-exhaustive but are intended to contain the most common factors which provide context to the commission of the particular offence.

Factors increasing seriousness**Statutory aggravating factors:**

Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction

Offence committed whilst on bail

Other aggravating factors:

Victim is targeted due to a vulnerability (or a perceived vulnerability)

Offender in a group or gang

Offender under the influence of alcohol or drugs

Location of the offence (where not taken into account at step one)

Timing of the offence (where not taken into account at step one)

Attempts to conceal identity (for example, wearing a balaclava or hood)

Offence committed against those working in the public sector or providing a service to the public

Steps taken to prevent the victim reporting or obtaining assistance and/or from assisting or supporting the prosecution

Commission of offence whilst under the influence of alcohol or drugs

Attempts to conceal/dispose of evidence

Established evidence of community/wider impact

Failure to comply with current court orders

Offence committed on licence or post sentence supervision

Offences taken into consideration

Failure to respond to warnings about behaviour

Factors reducing seriousness or reflecting personal mitigation

No previous convictions **or** no relevant/recent convictions

Good character and/or exemplary conduct

Serious medical condition requiring urgent, intensive or long-term treatment

Age and/or lack of maturity where it affects the responsibility of the offender

Mental disorder or learning disability (where not linked to the commission of the offence)

Little or no planning

Sole or primary carer for dependent relatives

Co-operation with the police

The factors are identical to those within the draft possession guideline, with the exception of 'planning' which is a step one factor.

Q16

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

Mandatory minimum sentences

The offences of threatening with a bladed article or offensive weapon in public or on school premises carry a mandatory minimum sentence of 6 months. As with the provisions relating to the possession offences, the court is required to reach a preliminary view on the sentence after considering steps one and two. If the preliminary sentence is less than 6 months the court should adjust the sentence unless satisfied that it would be unjust in all of the circumstances to do so.

Minimum Terms

When sentencing these offences a court must impose a sentence of at least 6 months' imprisonment **unless the court is of the opinion that there are particular circumstances relating to the offence or the offender which make it unjust to do so in all the circumstances.**

Q17

Does the section on minimum terms (above) provide adequate explanation of the provisions?

Q18

Do you agree that the guidance on minimum terms is at the right stage of the sentencing process?

Case Study B

V, a 35 year old male parked his car outside of D's house in a bay reserved for residents. There had been problems in the street with parking for years, and D was annoyed. D went out onto the street to vent his anger verbally. After shouting at V, D returned to his house and brought out a baseball bat. He went toward the victim with the bat raised in the air, shouting threats. V backed away as far as he could until he was on the bonnet of the car. V managed to roll away and ran down the street to safety. Several neighbours witnessed the offence and were upset by it. They called the police.

D is of previous good character.

D entered a guilty plea at the first available opportunity.

Step one – Culpability & Harm

None of the higher culpability factors apply.
Serious alarm/distress was caused to the victim.

This is a B1 offence with a starting point of 18 months and a range of 1 to 2 years' custody.

Step two – Aggravating & Mitigating Factors

Location and timing may be relevant as the offence was committed in a residential area in the presence of others who were caused distress.

In mitigation, the offender has no previous convictions, and was of good character.

At this stage the preliminary sentence is likely to be in the region of 18 months' custody.

The **mandatory minimum sentence** provisions apply to this case, but as the preliminary sentence is over 6 months, no adjustment is required.

Step three – Not relevant

Step four – Reduction for guilty pleas

D has pleaded guilty at the first opportunity, and is entitled to a reduction of a third.

The offender’s final sentence is likely to be in the region of 12 months’ custody.

Q19

Do you consider that the sentence imposed in Case Study B is proportionate? If you do not agree, please tell us what sentence should be imposed and why.

Section six: Bladed Articles and Offensive Weapons – Youth Guideline

This guideline is to be used for sentencing youths for all bladed article and offensive weapon offences. The guideline is to be read in conjunction with the *Overarching Principles – Sentencing Youths* guideline which provides much greater detail on procedure and comprehensive information on the different sentences available to the court when sentencing youths.

Mandatory minimum sentences

At the start of the guideline the court is required to consider whether a mandatory minimum sentence applies. If it does the court should consider whether there are any particular circumstances relating to the offence or the offender which make it unjust to impose such a sentence in all of the circumstances.

Mandatory Minimum Sentences – for 16 and 17 year olds only

Possession of Bladed Articles or Offensive Weapons

When sentencing the offences of:

- possession of an offensive weapon in a public place;
- possession of an article with a blade/point in a public place;
- possession of an offensive weapon on school premises; and
- possession of an article with blade/point on school premises

a court must impose a sentence of at least 4 months' Detention and Training Order where this is a second or further relevant offence **unless the court is of the opinion that there are particular circumstances relating to the offence or the offender which make it unjust to do so in all the circumstances.**

A 'relevant offence' includes those offences listed above and the following offences:

- threatening with an offensive weapon in a public place;
- threatening with an article with a blade/point in a public place;
- threatening with an article with a blade/point on school premises; and
- threatening with an offensive weapon on school premises.

Threatening with Bladed Articles or Offensive Weapons

When sentencing these offences a court must impose a sentence of at least 4 months Detention and Training Order **unless the court is of the opinion that there are particular circumstances relating to the offence or the offender which make it unjust to do so in all the circumstances.**

Q20

Does the section on minimum sentences (above) provide adequate explanation of the provisions?

Q21

Do you agree that the guidance on minimum sentences is at the right stage of the sentencing process?

Where a mandatory minimum sentence does not apply the court should follow the following steps.

STEP ONE: OFFENCE SERIOUSNESS – Nature of the offence

The first step of the guideline is to consider the nature of the offence. With the assistance of examples, the court is required to consider the culpability and harm factors specific to the offence that may indicate that the threshold for a certain type of sentence has been crossed. Whilst a certain sentence threshold will be indicated by this step, this is only the starting point and it is to be expected that sentencers may move away from this starting point on the basis of aggravating or mitigating factors relevant to the offence or the offender.

There are three factors that indicate that a non-custodial sentence may be the most appropriate starting point.

A non-custodial sentence may be the most suitable disposal where one or more of the following factors apply:

- Possession of weapon falls just short of reasonable excuse
- No/minimal risk of weapon being used to threaten or cause harm
- Fleeting incident and no/minimal distress

As with the adult guideline, these culpability and harm factors indicate the lowest levels of seriousness and, in the absence of additional culpability, harm or aggravating factors, the starting point sentence would be a non-custodial one.

Q22

Do you agree with the harm and culpability factors proposed at step one which indicate a non-custodial sentence? If not, please specify which you would add or remove and why.

A custodial sentence or Youth Rehabilitation Order with Intensive Supervision and Surveillance or Fostering may be justified where one or more of the following factors apply:

- Possession of a bladed article whether produced or not
- Possession of a highly dangerous weapon whether produced or not
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity
- Prolonged incident and serious alarm/distress
- Offence committed at a school or other place where vulnerable people may be present

Where the custodial threshold has been passed, the court can impose a custodial sentence or a YRO with ISS or fostering.

As with the adult guidelines the presence of a bladed article or other highly dangerous weapon is indicative of a high level of culpability and should lead to a starting point of a custodial sentence. Similarly, factors that indicate high levels of harm, such as a prolonged incident causing alarm and distress, or an incident occurring in a location where vulnerable people may be present should ensure a custodial starting point.

Q23

Do you agree with the harm and culpability factors proposed at step one which indicate that the starting point should be a custodial sentence? If not, please specify which you would add or remove and why.

STEP TWO: OFFENCE SERIOUSNESS – Aggravating and mitigating factors

To complete the assessment of seriousness the court is asked to identify whether there are any additional factors related to the offence that have not already been considered at step one, which might either aggravate or mitigate. These aggravating and mitigating factors allow the court to consider the wider context of the offence.

The lists at this step are not exhaustive and any factors not considered at step one, but which the court considers relevant either to the harm caused or intended, or the culpability of the offender, can be taken into account. A factor being present does not mean that the court must take it into account; it has discretion to decide whether factors are relevant in the case before it and, if so, will make an assessment of the weight to be given to them.

Although the list of factors is not exhaustive the Council's intention is to highlight factors that are likely to be relatively common to the offence, in order to ensure that they are considered by all sentencers.

The table below sets out the proposed aggravating factors.

Aggravating factors (non-exhaustive)
Previous findings of guilt, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction
Offender in a group or gang
Deliberate humiliation of victim, including but not limited to filming of the offence, deliberately committing the offence before a group of peers with the intent of causing additional distress or circulating details/photos/videos etc of the offence on social media or within peer groups
Victim is targeted due to a vulnerability (or a perceived vulnerability)
Location of the offence (where not taken into account at step one)
Timing of the offence (where not taken into account at step one)
Attempts to conceal identity (for example, wearing a balaclava or hood)
Commission of offence whilst under the influence of alcohol or drugs
Attempts to conceal/dispose of evidence
Offence committed against those working in the public sector or providing a service to the public
Steps taken to prevent the victim reporting or obtaining assistance and/or from assisting or supporting the prosecution
Established evidence of community/wider impact
Failure to comply with current court orders
Failure to respond to warnings about behaviour
Significant degree of planning/premeditation

The following factors are standard aggravating factors that have been included in other definitive guidelines and which are self explanatory. They are not subject to consultation.

- Commission of offence whilst under the influence of alcohol or drugs
- Attempts to conceal/dispose of evidence
- Established evidence of community/wider impact
- Failure to comply with current court orders
- Failure to respond to warnings about behaviour

The following factors have been included in the adult guideline, and the rationale for their inclusion can be found at page 20.

- Offender in a group or gang
- Location of the offence (where not taken into account at step one)
- Timing of the offence (where not taken into account at step one)
- Attempts to conceal identity (for example, wearing a balaclava or hood)
- Offence committed against those working in the public sector or providing a service to the public

'Significant degree of planning/premeditation' is a factor that is considered by the Council to increase the culpability of the offender, indicating a higher level of culpability than an opportunistic or impulsive offence.

'Deliberate humiliation of victim, including but not limited to filming of the offence, deliberately committing the offence before a group of peers with the intent of causing additional distress or circulating details/photos/videos etc of the offence on social media or within peer groups' is included as a factor because the Council is aware that through the use of social media, the recording and sharing of photographs and video footage has become increasingly common. This sort of behaviour is often used to embarrass or humiliate the victim.

'Steps taken to prevent reporting the incident/seeking assistance' is a factor which has been included in previous guidelines and is intended to reflect the serious aggravation created where offenders attempt to intimidate their victims into remaining silent.

Q24

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

The offence specific mitigating factors that may apply are set out below.

Mitigating factors (non-exhaustive)
No findings of guilt or no relevant/recent findings of guilt
Good character and/or exemplary conduct
Participated in offence due to peer pressure/bullying
Little or no planning
Co-operation with the police

'Participated in offence due to peer pressure/bullying' is included because the Council recognises that young people may be more inclined to engage in offending behaviour as a result of pressure from their peers and considers that it may be relevant when considering the seriousness of the offending behaviour.

Q25

Are there any offence-specific mitigating factors that should be added?

STEP THREE: OFFENDER MITIGATION

The court is then required to focus upon the offender and consider the personal factors that may have played a part in the commission of the offence. The offender-specific mitigating factors that may apply are set out below:

Offender mitigating factors (non-exhaustive)

Particularly young or immature offender

Mental disorder or learning disability, particularly where linked to the commission of the offence

Unstable upbringing including but not limited to numerous care placements, exposure to drug and alcohol abuse, lack of attendance at school, lack of familial presence or support, victim of neglect and/or abuse, exposure to familial criminal behaviour

Determination and/or demonstration of steps taken to address offending behaviour

Q26

Are there any offender-specific mitigating factors that should be added?

STEP FOUR: REDUCTION FOR GUILTY PLEAS

This section ensures that the court takes account of any reduction for a guilty plea.

STEP FIVE: REVIEW THE SENTENCE

This final step gives the court the opportunity to stand back and review the sentence, to ensure that it is appropriate and will address the likelihood of an offender reoffending and the risk of that offender causing serious harm.

Q27

Do you agree with the inclusion of the 'Review the Sentence' step? Please state what, if anything, should be removed or added.

Case Study C

D, a 16 year old female is with a group of friends in the park. The police approach, following reports of vandalism and anti social behaviour. They speak with the group about the complaints they have received. Whilst talking, one of the police officers catch a glimpse of something shiny in the waistband of D's jeans. He asks her if she has a knife, and she reveals that she does. She says she has it for protection from another group of young people who frequently use the park. She said that she had recently got into a fight with this group and feared retaliation.

D pleaded guilty at the first hearing. She has a previous finding of guilt for an offence of shop theft from 2014, where she received a 3 month referral order. She completed that order successfully. She also has a previous conviction for common assault in 2015 for which she received a 6 month YRO.

The pre-sentence report revealed that D has been in the care system since age 11 when she was removed from her mother's care because of neglect. She has never had a relationship with her father. She has been in foster care for most of the time but, due to a change in the foster carers' circumstances she has recently been moved to a care home. She has not responded well to this move. The YOT team indicate that D worked well with them in 2014 and they are willing to work with her again.

The **mandatory minimum sentence** provisions do not apply as this is the offender's first offence of possession of a bladed article.

Step one – Culpability & Harm

The offender is in possession of a bladed article. A custodial sentence or YRO with ISS may be justified.

Step two – Aggravating & Mitigating Factors

The offender has previous findings of guilt, but not for a similar offence. She was in a group at the time, but there is no evidence to suggest that there was group/gang activity going on that related to the offence. There may be evidence of community/wider impacts but the court would want to hear specific evidence of this fact.

In mitigation; the offender was fully co-operative with the police.

Step three – Offender Mitigation

The offender has had a difficult upbringing, and has recently gone through a disruptive change in her personal circumstances. The court would want to explore this in greater detail to establish what impact these changes have had on her life, and potentially on her offending behaviour. The court's main aim is rehabilitation and so understanding these background factors will be crucial.

Step four – Reduction for guilty pleas

D has pleaded guilty at the first opportunity, and is entitled to a reduction in her sentence.

Whilst the starting point for this offence was custody, the court will consider the offender and offence mitigating factors, and the fact that D has pleaded guilty at the first opportunity. These factors should be sufficient to move the court away from that starting point, toward a YRO. Given the seriousness of the offence the court may consider an **enhanced or intensive level YRO** to be the most appropriate sentence.

Q28

Do you consider that the sentence imposed in Case Study C is proportionate? If you do not agree, please tell us what sentence should be imposed and why.

Q29

Are there any equality or diversity matters that the Council should consider? Please provide evidence of any issues where possible.

Q30

Do you have any further comments you wish to make about any of the guidelines?

Annex A: List of consultation questions

Section four: Bladed Articles and Offensive Weapons – Possession

- Q1 Do you agree with the proposed approach to the assessment of culpability?
- Q2 Are there any culpability factors that should be added or removed?
- Q3 Do you agree with the proposed approach to the assessment of harm?
- Q4 Are there any harm factors that should be added or removed?
- Q5 Do you have any comments on the sentence ranges and starting points?
- Q6 Do you agree with the aggravating factors? Please state which, if any, should be removed or added.
- Q7 Are there any mitigating factors that should be added or removed?
- Q8 Does the section on minimum sentences provide adequate explanation of the provisions?
- Q9 Do you agree that the guidance on minimum sentences is at the right stage of the sentencing process?
- Q10 Do you consider that the sentence imposed in Case Study A is proportionate? If you do not agree, please tell us what sentence should be imposed and why.

Section five: Bladed Articles and Offensive Weapons – Threats

- Q11 Do you agree with the proposed approach to the assessment of culpability?
- Q12 Are there any culpability factors that should be added or removed?
- Q13 Do you agree with the proposed approach to the assessment of harm?

- Q14 Are there any harm factors that should be added or removed?
- Q15 Do you have any comments on the sentence ranges and starting points?
- Q16 Do you agree with the aggravating and mitigating factors? Please state which, if any, should be removed or added.
- Q17 Does the section on minimum terms provide adequate explanation of the provisions?
- Q18 Do you agree that the guidance on minimum terms is at the right stage of the sentencing process?
- Q19 Do you consider that the sentence imposed in Case Study B is proportionate? If you do not agree, please tell us what sentence should be imposed and why.

Section six: Bladed Articles and Offensive Weapons – Youth Guideline

- Q20 Does the section on minimum sentences provide adequate explanation of the provisions?
- Q21 Do you agree that the guidance on minimum sentences is at the right stage of the sentencing process?
- Q22 Do you agree with the harm and culpability factors proposed at step one which indicate a non-custodial sentence? If not, please specify which you would add or remove and why.
- Q23 Do you agree with the harm and culpability factors proposed at step one which indicate that the starting point should be a custodial sentence? If not, please specify which you would add or remove and why.
- Q24 Do you agree with the aggravating factors for this offence? Please state which, if any, should be removed or added.
- Q25 Are there any offence-specific mitigating factors that should be added?
- Q26 Are there any offender-specific mitigating factors that should be added?
- Q27 Do you agree with the inclusion of the 'Review the Sentence' step? Please state what, if anything, should be removed or added.
- Q28 Do you consider that the sentence imposed in Case Study C is proportionate? If you do not agree, please tell us what sentence should be imposed and why.
- Q29 Are there any equality or diversity matters that the Council should consider? Please provide evidence of any issues where possible.
- Q30 Do you have any further comments you wish to make about any of the guidelines?

Annex B:

Background to guidelines

Statutory requirements

In producing these draft guidelines, the Council has had regard to a number of statutory requirements.

The purposes of sentencing are stated in section 142 of the Criminal Justice Act 2003:

- the punishment of offenders;
- the reduction of crime (including its reduction by deterrence);
- the reform and rehabilitation of offenders;
- the protection of the public; and
- the making of reparation by offenders to persons affected by their offences.

The Sentencing Council has also had regard to the statutory duties in the Coroners and Justice Act 2009 which set out requirements for sentencing guidelines as follows:

- guidelines may be general in nature or limited to a particular offence;
- the Council must publish them as draft guidelines;
- the Council must consult the following persons about draft guidelines: the Lord Chancellor, such persons as the Lord Chancellor may direct, the Justice Select Committee of the House of Commons, such other persons as the Council considers appropriate;
- after making appropriate amendments, the Council must issue definitive guidelines;
- the Council may review the guidelines and may revise them;⁵
- the Council must publish a resource assessment in respect of the guidelines;⁶ and
- the Council must monitor the operation and effect of its sentencing guidelines.⁷

Section 125(a) of the Coroners and Justice Act 2009 states that, '*every court must, in sentencing an offender, follow any sentencing guideline which is relevant to the offender's case*'. Therefore, courts are required to impose a sentence consistent with the guidelines, unless contrary to the interests of justice to do so. Therefore, the Sentencing Council is keen to ensure that the guidelines are as accessible as possible for sentencers.

When preparing sentencing guidelines, the Council must have regard to the following matters:

- the sentences imposed by courts in England and Wales for offences;
- the need to promote consistency in sentencing;
- the impact of sentencing decisions on victims of offences;

⁵ s.120 Coroners and Justice Act 2009

⁶ s.127(2) *ibid*

⁷ s.128(1) *ibid*

- the need to promote public confidence in the criminal justice system;
- the cost of different sentences and their relative effectiveness in preventing re-offending; and
- the results of monitoring the operation and effect of its sentencing guidelines.⁸

When publishing any draft guidelines, the Council must publish a resource assessment of the likely effect of the guidelines on:

- the resources required for the provision of prison places;
- the resources required for probation provision; and
- the resources required for the provision of youth justice services.⁹

In order to achieve these requirements, the Council has considered case law on the offences included within the guidelines, where it is available, evidence on current sentencing practice and drawn on members' own experience of sentencing practice. The intention is for the decision making process in the proposed guideline to provide a clear structure, not only for sentencers, but to provide more clarity on sentencing for the victims and the public, so that they too can have a better understanding of how a sentence has been reached.

The Council has had regard to these duties throughout the preparation of this draft guideline. In developing an understanding of the cost and effectiveness of different sentences, the Council has considered the available information and evidence and these are contained in the resource assessment which accompanies this consultation paper.

8 s.120(11) Coroners and Justice Act 2009

9 s.127(3) *ibid*

Annex C: Draft guideline

Bladed Articles and Offensive Weapons – Possession

Possession of an offensive weapon in a public place

Prevention of Crime Act 1953 (section 1(1))

Possession of an article with blade/point in a public place

Criminal Justice Act 1988 (section 139(1))

Possession of an offensive weapon on school premises

Criminal Justice Act 1988 (section 139A(2))

Possession of an article with blade/point on school premises

Criminal Justice Act 1988 (section 139A(1))

Unauthorised possession in prison of a knife or offensive weapon

Prison Act 1952 (section 40CA)

Triable either way

Maximum: 4 years' custody

Offence range: Fine – 2 years 6 months' custody

This guideline applies only to offenders aged 18 and older

STEP ONE**Determining the offence category**

The court should determine the offence category with reference **only** to the factors listed in the tables below. In order to determine the category the court should assess **culpability** and **harm**.

The court should weigh all the factors set out below in determining the offender's culpability.

Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

Culpability demonstrated by one or more of the following

A – High culpability	<ul style="list-style-type: none"> • Possession of a bladed article whether produced or not • Possession of a highly dangerous weapon whether produced or not • Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity
B – Medium culpability	<ul style="list-style-type: none"> • Weapon (other than a bladed article or a highly dangerous weapon) used to threaten or cause fear
C – Lesser culpability	<ul style="list-style-type: none"> • Possession of weapon falls just short of reasonable excuse • All other cases where characteristics for categories A or B are not present

Harm

The court should consider the factors set out below to determine the level of harm that has been **caused or was intended** to be caused to the victim.

Category 1	<ul style="list-style-type: none"> • Offence committed at a school or other place where vulnerable people may be present • Offence committed in prison or other premises where there may be a risk of serious disorder • Serious alarm/distress
Category 2	<ul style="list-style-type: none"> • Other cases where characteristics for categories 1 or 3 are not present
Category 3	<ul style="list-style-type: none"> • Minimal risk of weapon being used to threaten or cause harm • No/minimal distress

STEP TWO**Starting point and category range**

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page.

Harm	Culpability		
	A	B	C
Category 1	Starting point 1 year 6 months' custody	Starting point 9 months' custody	Starting point 3 months' custody
	Category range 1 year's custody – 2 years 6 months' custody	Category range 6 months' custody – 1 year 6 months' custody	Category range High level community order – 6 months' custody
Category 2	Starting point 9 months' custody	Starting point 3 months' custody	Starting point High level community order
	Category range 6 months' custody – 1 year 6 months' custody	Category range High level community order – 6 months' custody	Category range Low level community order – 3 months' custody
Category 3	Starting point 3 months' custody	Starting point High level community order	Starting point Medium level community order
	Category range High level community order – 6 months' custody	Category range Low level community order – 3 months' custody	Category range Band C fine – High level community order

The table on the next page contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the sentence arrived at so far. In particular, relevant recent convictions are likely to result in an upward adjustment. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness**Statutory aggravating factors:**

Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction

Offence committed whilst on bail

Other aggravating factors:

Victim is targeted due to a vulnerability (or a perceived vulnerability)

Offender in a group or gang

Planning

Location of the offence (where not taken into account at step one)

Timing of the offence (where not taken into account at step one)

Attempts to conceal identity (for example, wearing a balaclava or hood)

Offence committed against those working in the public sector or providing a service to the public

Steps taken to prevent the victim reporting or obtaining assistance and/or from assisting or supporting the prosecution

Commission of offence whilst under the influence of alcohol or drugs

Attempts to conceal/dispose of evidence

Established evidence of community/wider impact

Failure to comply with current court orders

Offence committed on licence or post sentence supervision

Offences taken into consideration

Failure to respond to warnings about behaviour

Factors reducing seriousness or reflecting personal mitigation

No previous convictions **or** no relevant/recent convictions

Good character and/or exemplary conduct

Serious medical condition requiring urgent, intensive or long-term treatment

Age and/or lack of maturity where it affects the responsibility of the offender

Mental disorder or learning disability (where not linked to the commission of the offence)

No planning

Sole or primary carer for dependent relatives

Co-operation with the police

Minimum Terms – second or further relevant offence*

When sentencing the offences of:

- possession of an offensive weapon in a public place;
- possession of an article with a blade/point in a public place;
- possession of an offensive weapon on school premises; and
- possession of an article with blade/point on school premises

a court must impose a sentence of at least 6 months' imprisonment where this is a second or further relevant offence **unless the court is of the opinion that there are particular circumstances relating to the offence or the offender which make it unjust to do so in all the circumstances.**

A 'relevant offence' includes those offences listed above and the following offences:

- threatening with an offensive weapon in a public place;
- threatening with an article with a blade/point in a public place;
- threatening with an article with a blade/point on school premises; and
- threatening with an offensive weapon on school premises.

STEP THREE**Consider any factors which indicate a reduction for assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR**Reduction for guilty pleas***

The court should take account of any reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

Where a **mandatory minimum sentence** has been imposed under section 28 of the Criminal Justice and Courts Act 2015, the court must ensure that any reduction for a guilty plea does not reduce the sentence to less than 80 per cent of the mandatory minimum.

STEP FIVE**Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the *Offences Taken into Consideration and Totality* guideline.

STEP SIX**Ancillary orders**

In all cases the court should consider whether to make ancillary orders.

STEP SEVEN**Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP EIGHT**Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

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Bladed Articles and Offensive Weapons – Threats

Threatening with an offensive weapon in a public place

Prevention of Crime Act 1953 (section 1A)

Threatening with an article with blade/point in a public place

Criminal Justice Act 1988 (section 139AA(1))

Threatening with an article with blade/point on school premises

Criminal Justice Act 1988 (section 139AA(1))

Threatening with an offensive weapon on school premises

Criminal Justice Act 1988 (section 139A(1))

Triable either way

Maximum: 4 years' custody

Offence range: 6 months – 3 years' custody

This guideline applies only to offenders aged 18 and older

STEP ONE**Determining the offence category**

The court should determine the offence category with reference **only** to the factors listed in the tables below. In order to determine the category the court should assess **culpability** and **harm**.

The court should weigh all the factors set out below in determining the offender's culpability.

Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

Culpability demonstrated by one or more of the following**A – Higher culpability**

- Offence committed using a bladed article
- Offence committed using a highly dangerous weapon
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity
- Significant degree of planning or premeditation

B – Lower culpability

- All other cases

Harm

The court should consider the factors set out below to determine the level of harm that has been **caused or was intended** to be caused to the victim.

Category 1

- Prolonged incident
- Serious alarm/distress
- Offence committed at a school or other place where vulnerable people may be present
- Offence committed in prison or other premises where there may be a risk of serious disorder

Category 2

- Other cases where characteristics for categories 1 or 3 are not present

Category 3

- Fleeting incident and no/minimal distress

STEP TWO**Starting point and category range**

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page.

Harm	Culpability	
	A	B
Category 1	Starting point 2 years' custody	Starting point 1 year 6 months' custody
	Category range 1 year 6 months' custody – 3 years' custody	Category range 1 year's custody – 2 years' custody
Category 2	Starting point 1 year 6 months' custody	Starting point 1 year's custody
	Category range 1 year's custody – 2 years' custody	Category range 9 months' custody – 1 year 6 months' custody
Category 3	Starting point 1 year's custody	Starting point 9 months' custody
	Category range 9 months' custody – 1 year 6 months' custody	Category range 6 months' custody – 1 year's custody

The table on the next page contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the sentence arrived at so far. In particular, relevant recent convictions are likely to result in an upward adjustment. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness**Statutory aggravating factors:**

Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction

Offence committed whilst on bail

Other aggravating factors:

Victim is targeted due to a vulnerability (or a perceived vulnerability)

Offender in a group or gang

Offender under the influence of alcohol or drugs

Location of the offence (where not taken into account at step one)

Timing of the offence (where not taken into account at step one)

Attempts to conceal identity (for example, wearing a balaclava or hood)

Offence committed against those working in the public sector or providing a service to the public

Steps taken to prevent the victim reporting or obtaining assistance and/or from assisting or supporting the prosecution

Commission of offence whilst under the influence of alcohol or drugs

Attempts to conceal/dispose of evidence

Established evidence of community/wider impact

Failure to comply with current court orders

Offence committed on licence or post sentence supervision

Offences taken into consideration

Failure to respond to warnings about behaviour

Factors reducing seriousness or reflecting personal mitigation

No previous convictions **or** no relevant/recent convictions

Good character and/or exemplary conduct

Serious medical condition requiring urgent, intensive or long-term treatment

Age and/or lack of maturity where it affects the responsibility of the offender

Mental disorder or learning disability (where not linked to the commission of the offence)

Little or no planning

Sole or primary carer for dependent relatives

Co-operation with the police

Minimum Terms

When sentencing these offences a court must impose a sentence of at least 6 months' imprisonment **unless the court is of the opinion that there are particular circumstances relating to the offence or the offender which make it unjust to do so in all the circumstances.**

STEP THREE**Consider any factors which indicate a reduction for assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR**Reduction for guilty pleas***

The court should take account of any reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

Where a **mandatory minimum sentence** has been imposed under section 28 of the Criminal Justice and Court Act 2015, the court must ensure that any reduction for a guilty plea does not reduce the sentence to less than 80 per cent of the mandatory minimum.

STEP FIVE**Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the *Offences Taken into Consideration and Totality* guideline.

STEP SIX**Ancillary orders**

In all cases the court should consider whether to make ancillary orders.

STEP SEVEN**Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP EIGHT**Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

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Bladed Articles and Offensive Weapons – Youths

This guideline should be read alongside the *Overarching Principles – Sentencing Youths* definitive guideline which provides comprehensive guidance on the full range of sentences that are available by age. The guideline also includes details on issues such as grave crime determination and dangerousness.

Mandatory Minimum Sentences – for 16 and 17 year olds only

Possession of Bladed Articles or Offensive Weapons

When sentencing the offences of:

- possession of an offensive weapon in a public place;
- possession of an article with a blade/point in a public place;
- possession of an offensive weapon on school premises; and
- possession of an article with blade/point on school premises

a court must impose a sentence of at least 4 months' Detention and Training Order where this is a second or further relevant offence **unless the court is of the opinion that there are particular circumstances relating to the offence or the offender which make it unjust to do so in all the circumstances.**

A 'relevant offence' includes those offences listed above and the following offences:

- threatening with an offensive weapon in a public place;
- threatening with an article with a blade/point in a public place;
- threatening with an article with a blade/point on school premises; and
- threatening with an offensive weapon on school premises.

Threatening with Bladed Articles or Offensive Weapons

When sentencing these offences a court must impose a sentence of at least 4 months Detention and Training Order **unless the court is of the opinion that there are particular circumstances relating to the offence or the offender which make it unjust to do so in all the circumstances.**

Where the offender is not subject to a mandatory minimum sentence the first step in determining the sentence is to assess the seriousness of the offence. This assessment is made by considering the nature of the offence and any aggravating and mitigating factors relating to the offence itself. **The fact that a sentence threshold is crossed does not necessarily mean that that sentence should be imposed.**

STEP ONE**Offence Seriousness – Nature of the offence**

The boxes below give **examples** of the type of culpability and harm factors that may indicate that a particular threshold of sentence has been crossed.

A non-custodial sentence* may be the most suitable disposal where one or more of the following factors apply:

- Possession of weapon falls just short of reasonable excuse
- No/minimal risk of weapon being used to threaten or cause harm
- Fleeting incident and no/minimal distress

A custodial sentence or Youth Rehabilitation Order with Intensive Supervision and Surveillance* or Fostering* may be justified where one or more of the following factors apply:

- Possession of a bladed article whether produced or not
- Possession of a highly dangerous weapon whether produced or not
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity
- Prolonged incident and serious alarm/distress
- Offence committed at a school or other place where vulnerable people may be present

* Where the young offender appears in the magistrates' court, and the conditions for a compulsory referral order apply, a referral order must be imposed unless the court is considering imposing a discharge, hospital order or custody.

STEP TWO**Offence Seriousness – Aggravating and mitigating factors**

To complete the assessment of seriousness the court should consider the aggravating and mitigating factors relevant to the offence.

Aggravating factors (non-exhaustive)

Previous findings of guilt, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction

Offender in a group or gang

Deliberate humiliation of victim, including but not limited to filming of the offence, deliberately committing the offence before a group of peers with the intent of causing additional distress or circulating details/photos/videos etc of the offence on social media or within peer groups

Victim is targeted due to a vulnerability (or a perceived vulnerability)

Location of the offence (where not taken into account at step one)

Timing of the offence (where not taken into account at step one)

Attempts to conceal identity (for example, wearing a balaclava or hood)

Commission of offence whilst under the influence of alcohol or drugs

Attempts to conceal/dispose of evidence

Offence committed against those working in the public sector or providing a service to the public

Steps taken to prevent the victim reporting or obtaining assistance and/or from assisting or supporting the prosecution

Established evidence of community/wider impact

Failure to comply with current court orders

Failure to respond to warnings about behaviour

Significant degree of planning/premeditation

Mitigating factors (non-exhaustive)

No findings of guilt **or** no relevant/recent findings of guilt

Good character and/or exemplary conduct

Participated in offence due to peer pressure/bullying

Little or no planning

Co-operation with the police

STEP THREE

Offender mitigation

Having assessed the offence seriousness the court should then consider the mitigation personal to the offender to determine whether a custodial sentence or a community sentence is necessary. The effect of personal mitigation may reduce what would otherwise be a custodial sentence to a non-custodial one or a community sentence to a different means of disposal.

Offender mitigating factors (non-exhaustive)

Particularly young or immature offender

Mental disorder or learning disability, particularly where linked to the commission of the offence

Unstable upbringing including but not limited to numerous care placements, exposure to drug and alcohol abuse, lack of attendance at school, lack of familial presence or support, victim of neglect and/or abuse, exposure to familial criminal behaviour

Determination and/or demonstration of steps taken to address offending behaviour

STEP FOUR

Reduction for guilty pleas

The court should take account of any reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Overarching Principles – Sentencing Youths* guideline.

The reduction in sentence for a guilty plea can be taken into account by imposing one type of sentence rather than another; for example:

- by reducing a custodial sentence to a community sentence, or
- by reducing a community sentence to a different means of disposal.

See the *Overarching Principles – Sentencing Youths* definitive guideline for details of other available sentences including Referral Orders and Reparation Orders.

STEP FIVE

Review the sentence

The court must now review the sentence to ensure it is the most appropriate one for the young offender. This will include an assessment of the likelihood of reoffending and the risk of causing serious harm. A report from the Youth Offending Team may assist.

Youth Rehabilitation Order

The following non-custodial sentences are available under a Youth Rehabilitation Order:

	Offender profile	Requirements of order
Standard	Low likelihood of re-offending and a low risk of serious harm	Primarily seek to repair harm caused through, for example: <ul style="list-style-type: none"> • reparation; • unpaid work; • supervision; and/or • attendance centre.
Enhanced	Medium likelihood of re-offending or a medium risk of serious harm	Seek to repair harm caused and to enable help or change through, for example: <ul style="list-style-type: none"> • supervision; • reparation; • requirement to address behaviour e.g. drug treatment, offending behaviour programme, education programme; and/or • a combination of the above.
Intensive	High likelihood of re-offending or a very high risk of serious harm	Seek to ensure the control of the young person through, for example: <ul style="list-style-type: none"> • supervision; • reparation; • requirement to address behaviour; • requirement to monitor or restrict movement, e.g. prohibited activity, curfew, exclusion or electronic monitoring; and/or • a combination of the above.

YRO with Intensive Supervision and Surveillance (ISS) or YRO with fostering

A YRO with an ISS or fostering requirement can only be imposed where the court is of the opinion that the offence has crossed the custody threshold.

The YRO with ISS includes an extended activity requirement, a supervision requirement and curfew. The YRO with fostering requires the offender to reside with a local authority foster parent for a specified period of up to 12 months.

Custodial Sentences

Where a custodial sentence is **unavoidable** the length of custody imposed must be commensurate with the seriousness of the offence. The court may want to consider the equivalent adult guideline in order to determine the appropriate length of the sentence.

If considering the adult guideline, the court may feel it appropriate to apply a sentence broadly within the region of half to two thirds of the appropriate adult sentence for those aged 15–17 and allow a greater reduction for those aged under 15. This is only a rough guide and must not be applied mechanically. The individual factors relating to the offence and the offender are of the greatest importance and may present good reason to impose a sentence outside of this range.

Annex D:

Fine bands and community orders

FINE BANDS

In this guideline, fines are expressed as one of three fine bands (A, B, C).

Fine Band	Starting point (<i>applicable to all offenders</i>)	Category range (<i>applicable to all offenders</i>)
Band A	50% of relevant weekly income	25–75% of relevant weekly income
Band B	100% of relevant weekly income	75–125% of relevant weekly income
Band C	150% of relevant weekly income	125–175% of relevant weekly income

COMMUNITY ORDERS

In this guideline, community sentences are expressed as one of three levels (low, medium and high).

An illustrative description of examples of requirements that might be appropriate for each level is provided below. Where two or more requirements are ordered, they must be compatible with each other. Save in exceptional circumstances, the court must impose at least one requirement for the purpose of punishment, or combine the community order with a fine, or both (see section 177 Criminal Justice Act 2003).

Low	Medium	High
Offences only just cross community order threshold, where the seriousness of the offence or the nature of the offender's record means that a discharge or fine is inappropriate	Offences that obviously fall within the community order band	Offences only just fall below the custody threshold or the custody threshold is crossed but a community order is more appropriate in the circumstances
In general, only one requirement will be appropriate and the length may be curtailed if additional requirements are necessary		More intensive sentences which combine two or more requirements may be appropriate
Suitable requirements might include: <ul style="list-style-type: none"> • 40–80 hours of unpaid work; • prohibited activity requirement; • curfew requirement within the lowest range (for example, up to 16 hours per day for a few weeks); • attendance centre requirement (where available); • exclusion requirement, without electronic monitoring, for a few months 	Suitable requirements might include: <ul style="list-style-type: none"> • greater number of hours of unpaid work (for example, 80–150 hours); • prohibited activity requirement; • curfew requirement within the middle range (for example, up to 16 hours for 2–3 months); • exclusion requirement lasting in the region of 6 months 	Suitable requirements might include: <ul style="list-style-type: none"> • 150–300 hours of unpaid work; • curfew requirement up to 16 hours per day for 4–6 months; • exclusion order lasting in the region of 12 months

The tables are also set out in the *Magistrates' Court Sentencing Guidelines* which includes further guidance on fines and community orders.

