



Sentencing Guidelines Council

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**Magistrates' Court  
Sentencing Guidelines**

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**Definitive Guideline**

## FOREWORD

The Magistrates' Court Sentencing Guidelines have been a settled feature of magistrates' courts for many years. This edition applies to all relevant cases appearing for allocation (mode of trial) or for sentence on or after 4 August 2008 and replaces the guidelines which were effective from 1 January 2004. It also supersedes the part of the Practice Direction covering Mode of Trial Decisions (Part V.51) in relation to offences contained within the guideline.

This is the most extensive guideline produced by the Council and covers most of the offences regularly coming before a magistrates' court which require decisions on allocation or on sentence. The guideline also contains explanatory material that sets out a common approach to more general issues.

For the first time, there is a statutory obligation on every court to have regard to this guideline in a relevant case and to give reasons when imposing a sentence outside the range identified.

This guideline is the result of an intensive and consultative process, which has at all stages benefited from the involvement of key users of the guidelines. The Council is extremely grateful to all who have played a part in developing the guideline and has greatly appreciated the time and thought that has gone into the preparation of responses to each aspect of the consultation.

The Council is also enormously grateful to the Sentencing Advisory Panel and, in particular, to the members of its advisory group, for the extensive consideration they have given, not only to detailed matters of content but also to ensuring a proper balance in the assessment of the seriousness of all the offences involved.

The advisory group has committed a significant amount of time and energy over the past two years to the very detailed work necessary to produce guidelines covering such a wide range of offences and issues. Its members have been Chris Armstrong (Justices' Clerks' Society), Professor Andrew Ashworth (Chairman of the Sentencing Advisory Panel), Cindy Barnett JP (Chairman of the Magistrates' Association), David Brewer (Justices' Clerks' Society), Judge Stephen Day (District Judge (Magistrates' Courts)), Anne Fuller JP (Member of the Sentencing Advisory Panel), David Mallen (Member of the Sentencing Advisory Panel), Judge David Meredith (District Judge (Magistrates' Courts)) and Judge Howard Riddle (District Judge (Magistrates' Courts) and Member of the Sentencing Advisory Panel).

The advice of the Panel, draft guidelines and these definitive guidelines are all available on [www.sentencing-guidelines.gov.uk](http://www.sentencing-guidelines.gov.uk) or can be obtained from the Sentencing Guidelines Secretariat at 4th Floor, 8-10 Great George Street, London SW1P 3AE. The website also contains a summary of the responses to the Council's consultation on the draft guidelines.

Chairman of the Council  
May 2008

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# Introduction

## What's included in the Magistrates' Court Sentencing Guidelines

- Overarching guidelines issued by the Sentencing Council (within this Part).
- Guidelines and guidance issued by the Sentencing Guidelines Council:
  - ▶ offence guidelines (Part 3);
  - ▶ motoring offence guidelines (Part 4); and
  - ▶ explanatory material (Part 5).
- Offence specific guidelines issued by the Sentencing Council (Part 6).

In some instances, the guidelines previously issued by the Sentencing Guidelines Council and Court of Appeal have been necessarily summarised; **the original guideline or Court of Appeal judgment should be consulted for comprehensive guidance.**

## Following these guidelines

**When sentencing offences committed after 6 April 2010, every court is under a statutory obligation to follow any relevant Council guideline unless it would be contrary to the interests of justice to do so.<sup>1</sup> If a court imposes a sentence outside the range indicated in an offence specific guideline, it is obliged to state its reasons for doing so.<sup>2</sup>**

## When to use these guidelines

- These guidelines apply to **sentencing in a magistrates' court** whatever the composition of the court. They cover

offences for which sentences are frequently imposed in a magistrates' court when dealing with adult offenders.

- They also apply to **allocation (mode of trial) decisions**. When dealing with an either way offence for which there is no plea or an indication of a not guilty plea, these guidelines will be relevant to the allocation decision and should be consulted at this stage.

**In general, either way offences should be tried summarily unless it is likely that the court's sentencing powers will be insufficient** and reference should be made to the definitive offence guidelines to assess the likely sentence. Reference should be made to the allocation guideline within this Part (at page 18b) which replaces the relevant sections of the Mode of Trial guidelines in Part V.51 of the Consolidated Criminal Practice Direction.

- These guidelines apply also to the **Crown Court** when dealing with appeals against sentences imposed in a magistrates' court and when sentencing for summary only offences.

## Further information

All guidelines issued by the Sentencing Guidelines Council and the Sentencing Council, and further information on the guidelines, are available at [www.sentencingcouncil.org.uk](http://www.sentencingcouncil.org.uk) or can be obtained from the Office of the Sentencing Council, Room EB14, Royal Courts of Justice, Strand, London, WC2A 2LL.

<sup>1</sup> Coroners and Justice Act 2009, s.125(1)

<sup>2</sup> Criminal Justice Act 2003, s.174(2)(a)

# User Guide

These guidelines include two structures: that used by the Sentencing Guidelines Council in the guidelines contained within Parts 3 and 4, and that adopted by the Sentencing Council in the guidelines contained within Part 6.

## Using Parts 3 and 4

The first section of the user guide explains the key decisions involved in the sentencing process for guidelines in **Parts 3 and 4**. A step-by-step summary is provided on the pullout card.

### 1. Assess offence seriousness (culpability and harm)

Offence seriousness is the starting point for sentencing under the Criminal Justice Act 2003. The court's assessment of offence seriousness will:

- determine which of the sentencing thresholds has been crossed;
- indicate whether a custodial, community or other sentence is the most appropriate;
- be the key factor in deciding the length of a custodial sentence, the onerousness of requirements to be incorporated in a community sentence and the amount of any fine imposed.

When considering the seriousness of any offence, the court must consider the offender's **culpability** in committing the offence and any **harm** which the offence caused, was intended to cause, or might foreseeably have caused.<sup>3</sup> In using these guidelines, this assessment should be approached in two stages:

#### 1. Offence seriousness (culpability and harm) A. Identify the appropriate starting point

The guidelines set out **examples** of the nature of activity which may constitute the offence, progressing from less to more serious conduct, and provide a **starting point** based on a **first time offender pleading not guilty**. The guidelines also specify a sentencing **range** for each example of activity. Refer to pages 145-146 for further guidance on the meaning of the terms 'starting point', 'range' and 'first time offender'.

Sentencers should begin by considering which of the examples of offence activity corresponds most closely to the circumstances of the particular case in order to identify the appropriate **starting point**:

- where the starting point is a fine, this is indicated as band A, B or C. The approach to assessing fines is set out on pages 148-155;
- where the community sentence threshold is passed, the guideline sets out whether the starting point should be a low, medium or high level community order. Refer to pages 160-162 for further guidance;
- where the starting point is a custodial sentence, refer to pages 163-164 for further guidance.

The Council's definitive guideline *Overarching Principles: Seriousness*, published 16 December 2004, identifies four levels of culpability for sentencing purposes (intention, recklessness, knowledge and negligence). The starting points in the individual offence guidelines assume that culpability is at the highest level applicable to the offence (often, but not always, intention). **Where a lower level of culpability is present, this should be taken into account.**

<sup>3</sup> Criminal Justice Act 2003, s.143(1)

## 1. Offence seriousness (culpability and harm)

### B. Consider the effect of aggravating and mitigating factors

Once the starting point has been identified, the court can add to or reduce this to reflect any aggravating or mitigating factors that impact on the **culpability** of the offender and/or **harm** caused by the offence to reach a provisional sentence. Any factors contained in the description of the activity used to reach the starting point must not be counted again.

The **range** is the bracket into which the provisional sentence will normally fall after having regard to factors which aggravate or mitigate the seriousness of the offence.

However:

- the court is not precluded from going outside the range where the facts justify it;
- previous convictions which aggravate the seriousness of the current offence may take the provisional sentence beyond the range, especially where there are significant other aggravating factors present.

In addition, where an offender is being sentenced for multiple offences, the court's assessment of the totality of the offending may result in a sentence above the range indicated for the individual offences, including a sentence of a different type. Refer to page 18g for further guidance.

The guidelines identify aggravating and mitigating factors which may be particularly relevant to each individual offence. These include some factors drawn from the general list of aggravating and mitigating factors in the Council's definitive guideline *Overarching Principles: Seriousness* published 16 December 2004, (reproduced on the pullout card). In each case, sentencers should have regard to the full list, which includes the factors that, by statute, make an offence more serious:

- offence committed while on bail for other offences;
- offence was racially or religiously aggravated;
- offence was motivated by, or demonstrates, hostility based on the victim's sexual orientation (or presumed sexual orientation);
- offence was motivated by, or demonstrates, hostility based on the victim's disability (or presumed disability);
- offender has previous convictions that the court considers can reasonably be treated as aggravating factors having regard to their relevance to the current offence and the time that has elapsed since conviction.

While the lists in the offence guidelines and pullout card aim to identify the most common aggravating and mitigating factors, **they are not intended to be exhaustive**. Sentencers should always consider whether there are any other factors that make the offence more or less serious.

## 2. Form a preliminary view of the appropriate sentence, then consider offender mitigation

When the court has reached a provisional sentence based on its assessment of offence seriousness, it should take into account matters of offender mitigation. The Council guideline *Overarching Principles: Seriousness* states that the issue of remorse should be taken into account at this point along with other mitigating features such as admissions to the police in interview.

### 3. Consider a reduction for a guilty plea

The Council guideline *Reduction in Sentence for a Guilty Plea*, revised 2007, states that the **punitive** elements of the sentence should be reduced to recognise an offender's guilty plea. The reduction has no impact on sentencing decisions in relation to ancillary orders, including disqualification.

The level of the reduction should reflect the stage at which the offender indicated a willingness to admit guilt and will be gauged on a sliding scale, ranging from a **recommended** one third (where the guilty plea was entered at the first reasonable opportunity), reducing to a **recommended** one quarter (where a trial date has been set) and to a **recommended** one tenth (for a guilty plea entered at the 'door of the court' or after the trial has begun). There is a presumption that the recommended reduction will be given unless there are good reasons for a lower amount.

The application of the reduction may affect the type, as well as the severity, of the sentence. It may also take the sentence below the **range** in some cases.

The court must state that it has reduced a sentence to reflect a guilty plea.<sup>4</sup> It should usually indicate what the sentence would have been if there had been no reduction as a result of the plea.

### 4. Consider ancillary orders, including compensation

Ancillary orders of particular relevance to individual offences are identified in the relevant guidelines; further guidance is set out on pages 168-174.

The court must **always** consider making a compensation order where the offending has resulted in personal injury, loss or damage.<sup>5</sup> The court is required to give reasons if it decides not to make such an order.<sup>6</sup>

### 5. Decide sentence Give reasons

Sentencers must state reasons for the sentence passed in **every** case, including for any ancillary orders imposed.<sup>7</sup> It is particularly important to identify any aggravating or mitigating factors, or matters of offender mitigation, that have resulted in a sentence more or less severe than the suggested starting point.

If a court imposes a sentence of a different kind or outside the **range** indicated in the guidelines, **it must state its reasons for doing so.**<sup>8</sup>

The court should also give its reasons for not making an order that has been canvassed before it or that it might have been expected to make.

<sup>4</sup> Criminal Justice Act 2003, s.174(2)(d)

<sup>5</sup> Powers of Criminal Courts (Sentencing) Act 2000, s.130(1)

<sup>6</sup> *ibid.*, s.130(3)

<sup>7</sup> Criminal Justice Act 2003, s.174(1)

<sup>8</sup> *ibid.*, s.174(2)(a)

## Using Part 6

This section of the user guide explains the key decisions involved in the sentencing process for guidelines in **Part 6**.

### STEP ONE

#### Determining the offence category

The decision making process includes a two step approach to assessing seriousness. The first step is to determine the offence category by means of an assessment of the offender's culpability and the harm caused, or intended, by reference **only** to the factors set out at step one in each guideline.<sup>1</sup> The contents are tailored for each offence and comprise the principal factual elements of the offence.

### STEP TWO

#### Starting point and category range

The guidelines provide a **starting point** which applies to all offenders irrespective of plea or previous convictions. The guidelines also specify a **category range** for each offence category.

The guidelines provide non-exhaustive lists of aggravating and mitigating factors relating to the context of the offence and to the offender. Sentencers should identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point.

In some cases, it may be appropriate to move outside the identified category range when reaching a provisional sentence.

## FURTHER STEPS

Having reached a provisional sentence, there are a number of further steps within the guidelines. These steps are clearly set out within each guideline and are tailored specifically for each offence in order to ensure that only the most appropriate guidance is included within each offence specific guideline.

The further steps include:

- reduction for assistance to the prosecution;
- reduction for guilty pleas (courts should refer to the *Guilty Plea* guideline);
- where an offender is being sentenced for multiple offences – the court's assessment of the totality of the offending may result in a sentence above the range indicated for the individual offences, including a sentence of a different type (refer to page 18g for further guidance);
- compensation orders and/or ancillary orders appropriate to the case; and
- reasons for, and explain the effect of, the sentence.

<sup>1</sup> Except in the corporate fraud guideline where the culpability factors are non-exhaustive and are at step 3

# Allocation guideline

## Determining whether cases should be dealt with by a magistrates' court or the Crown Court

### Applicability of guideline

In accordance with section 122(2) of the Coroners and Justice Act 2009, the Sentencing Council issues this definitive guideline. It applies to all defendants in the magistrates' court (including youths jointly charged with adults) whose cases are dealt with on or after 1 March 2016.

It also applies to allocation decisions made in the Crown Court pursuant to Schedule 3 of the Crime and Disorder Act 1998. It will not be applicable in the youth court where a separate statutory procedure applies.

### Venue for trial

It is important to ensure that all cases are tried at the appropriate level.

#### 1. In general, either way offences should be tried summarily unless:

- the outcome would clearly be a sentence in excess of the court's powers for the offence(s) concerned after taking into account personal mitigation and any potential reduction for a guilty plea; or
- for reasons of unusual legal, procedural or factual complexity, the case should be tried in the Crown Court. This exception may apply in cases where a very substantial fine is the likely sentence. Other circumstances where this exception will apply are likely to be rare and case specific; the court will rely on the submissions of the parties to identify relevant cases.

2. In cases with no factual or legal complications the court should bear in mind its **power to commit for sentence after a trial** and may **retain jurisdiction** notwithstanding that the likely sentence might exceed its powers.

3. Cases may be tried summarily even where the defendant is subject to a Crown Court Suspended Sentence Order or Community Order.<sup>1</sup>

4. All parties should be asked by the court to make representations as to whether the case is suitable for summary trial. The court should refer to definitive guidelines (if any) to assess the likely sentence for the offence in the light of the facts alleged by the prosecution case, taking into account all aspects of the case including those advanced by the defence, including any personal mitigation to which the defence wish to refer.

**Where the court decides that the case is suitable to be dealt with in the magistrates' court, it must warn the defendant that all sentencing options remain open and, if the defendant consents to summary trial and is convicted by the court or pleads guilty, the defendant may be committed to the Crown Court for sentence.**

<sup>1</sup> The power to commit the case to the Crown Court to be dealt with under para 11(1) of Schedule 12 or para 22 of Schedule 8 to the Criminal Justice Act 2003 can be exercised if the defendant is convicted.



## Committal for sentence

There is ordinarily no statutory restriction on committing an either way case for sentence following conviction. The general power of the magistrates' court to commit to the Crown Court for sentence after a finding that a case is suitable for summary trial and/or conviction continues to be available where the court is of the opinion 'that the offence or the combination of the offence and one or more offences associated with it was so serious that the Crown Court should, in the court's opinion, have the power to deal with the offender in any way it could deal with him if he had been convicted on indictment'.<sup>2</sup>

However, where the court proceeds to the summary trial of certain offences relating to criminal damage, upon conviction there is no power to commit to the Crown Court for sentence.<sup>3</sup>

The court should refer to any definitive guideline to arrive at the appropriate sentence taking into account all of the circumstances of the case including personal mitigation and the appropriate guilty plea reduction.

In borderline cases the court should consider obtaining a pre-sentence report before deciding whether to commit to the Crown Court for sentence.

Where the offending is so serious that the court is of the opinion that the Crown Court should have the power to deal with the offender, the case should be committed to the Crown Court for sentence even if a community order may be the appropriate sentence (this will allow the Crown Court to deal with any breach of a community order, if that is the sentence passed).

## Youths jointly charged with adults – interests of justice test

The proper venue for the trial of any youth is normally the youth court. Subject to statutory restrictions, that remains the case where a youth is charged jointly with an adult.

This guideline does not provide information on the complex statutory framework for dealing with a youth jointly charged with an adult: consult your legal adviser for advice.

The following guidance must be applied in those cases where the interests of justice test falls to be considered:

1. If the adult is sent for trial to the Crown Court, the court should conclude that the youth must be tried separately in the youth court unless it is in the interests of justice for the youth and the adult to be tried jointly.
2. Examples of factors that should be considered when deciding whether it is in the interests of justice to send the youth to the Crown Court (rather than having a trial in the youth court) include:
  - whether separate trials will cause injustice to witnesses or to the case as a whole (consideration should be given to the provisions of sections 27 and 28 of the Youth Justice and Criminal Evidence Act 1999);
  - the age of the youth: the younger the youth, the greater the desirability that the youth be tried in the youth court;
  - the age gap between the youth and the adult: a substantial gap in age militates in favour of the youth being tried in the youth court;
  - the lack of maturity of the youth;
  - the relative culpability of the youth compared with the adult and whether the alleged role played by the youth was minor;
  - the lack of previous convictions on the part of the youth.

2. Powers of Criminal Courts (Sentencing) Act 2000, s.3.

3. Magistrates' Courts Act 1980, s.3(4) and s.22.

3. The court should bear in mind that the youth court now has a general power to commit for sentence following conviction pursuant to Section 3B of the Powers of Criminal Courts (Sentencing) Act 2000 (as amended). In appropriate cases this will permit the same court to sentence adults and youths who have been tried separately.

### Statutory Framework

Section 19 of the Magistrates' Courts Act 1980 provides that:

“(1) The court shall decide whether the offence appears to it more suitable for summary trial or for trial on indictment.

(2) Before making a decision under this section, the court –

(a) shall give the prosecution an opportunity to inform the court of the accused's previous convictions (if any); and

(b) shall give the prosecution and the accused an opportunity to make representations as to whether summary trial or trial on indictment would be more suitable.

(3) In making a decision under this section, the court shall consider –

(a) whether the sentence which a magistrates' court would have power to impose for the offence would be adequate; and

(b) any representations made by the prosecution or the accused under subsection (2)(b) above,

and shall have regard to any allocation guidelines (or revised allocation guidelines) issued as definitive guidelines under section 122 of the Coroners and Justice Act 2009.

(4) Where –

(a) the accused is charged with two or more offences; and

(b) it appears to the court that the charges for the offences could be joined in the same indictment or that the offences arise out of the same or connected circumstances,

subsection (3)(a) above shall have effect as if references to the sentence which a magistrates' court would have power to impose for the offence were a reference to the maximum aggregate sentence which a magistrates' court would have power to impose for all of the offences taken together.”

Section 125(1) of the 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.”

# Offences Taken Into Consideration guideline

## Applicability of guideline

In accordance with section 120 of the Coroners and Justice Act 2009, the Sentencing Council issues this definitive guideline. It applies to all offenders whose cases are dealt with on or after 11 June 2012.

Section 125(1) of the 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.”

This guideline applies where an offender admits the commission of other offences in the course of sentencing proceedings and requests those other offences to be taken into consideration.<sup>5</sup>

## General principles

When sentencing an offender who requests offences to be taken into consideration (TICs), courts should pass a total sentence which reflects *all* the offending behaviour. The sentence must be just and proportionate and must not exceed the statutory maximum for the conviction offence.

## Offences to be Taken Into Consideration

The court has discretion as to whether or not to take TICs into account. In exercising its discretion the court should take into account that TICs are capable of reflecting the offender’s overall criminality. The court is likely to consider that the fact that the offender has assisted the police (particularly if the offences would not otherwise have been detected) and avoided the need for further proceedings demonstrates a genuine determination by the offender to ‘wipe the slate clean’.<sup>6</sup>

It is generally **undesirable** for TICs to be accepted in the following circumstances:

- where the TIC is likely to attract a greater sentence than the conviction offence;
- where it is in the public interest that the TIC should be the subject of a separate charge;

<sup>5</sup> s.305 Criminal Justice Act 2003 and s161(1) Powers of Criminal Courts (Sentencing) Act 2000

<sup>6</sup> Per Lord Chief Justice, R v Miles [2006] EWCA Crim 256

- where the offender would avoid a prohibition, ancillary order or similar consequence which it would have been desirable to impose on conviction. For example:
    - where the TIC attracts mandatory disqualification or endorsement and the offence(s) for which the defendant is to be sentenced do not;
  - where the TIC constitutes a breach of an earlier sentence;<sup>7</sup>
  - where the TIC is a specified offence for the purposes of section 224 of the Criminal Justice Act 2003, but the conviction offence is non-specified; or
  - where the TIC is not founded on the same facts or evidence or part of a series of offences of the same or similar character (unless the court is satisfied that it is in the interests of justice to do so).
- the date of the offence(s), relevant detail about the offence(s) (including, for example, monetary values of items) and any other brief details that the court should be aware of;
- a copy of the TIC schedule must be provided to the defendant and his representative (if he has one) before the sentence hearing. The defendant should sign the TIC schedule to provisionally admit the offences;
  - at the sentence hearing, the court should ask the defendant in open court whether he admits each of the offences on the TIC schedule and whether he wishes to have them taken into consideration;<sup>9</sup>
  - if there is any doubt about the admission of a particular offence, it should not be accepted as a TIC. Special care should be taken with vulnerable and/or unrepresented defendants;
  - if the defendant is committed to the Crown Court for sentence, this procedure must take place again at the Crown Court even if the defendant has agreed to the schedule in the magistrates' court.

### Jurisdiction

The magistrates' court cannot take into consideration an indictable only offence.

The Crown Court can take into account summary only offences provided the TICs are founded on the same facts or evidence as the indictable charge, or are part of a series of offences of the same or similar character as the indictable conviction offence.<sup>8</sup>

### Procedural safeguards

A court should generally only take offences into consideration if the following procedural provisions have been satisfied:

- the police or prosecuting authorities have prepared a schedule of offences (TIC schedule) that they consider suitable to be taken into consideration. The TIC schedule should set out the nature of each offence,

### Application

The sentence imposed on an offender should, in most circumstances, be increased to reflect the fact that other offences have been taken into consideration. The court should:

1. Determine the sentencing starting point for the conviction offence, referring to the relevant definitive sentencing guidelines. No regard should be had to the presence of TICs at this stage.
2. Consider whether there are any aggravating or mitigating factors that justify an upward or downward adjustment from the starting point.

<sup>7</sup> R v Webb (1953) 37 Cr App 82

<sup>8</sup> s.40 Criminal Justice Act 1988

<sup>9</sup> Anderson v DPP [1978] AC 964

The presence of TICs should generally be treated as an aggravating feature that justifies an upward adjustment from the starting point. Where there is a large number of TICs, it may be appropriate to move outside the category range, although this must be considered in the context of the case and subject to the principle of totality. The court is limited to the statutory maximum for the conviction offence.

3. Continue through the sentencing process including:
  - consider whether the frank admission of a number of offences is an indication of a defendant's remorse or determination and/or demonstration of steps taken to address addiction or offending behaviour;
  - any reduction for a guilty plea should be applied to the overall sentence;
  - the principle of totality;
  - when considering ancillary orders these can be considered in relation to any or all of the TICs, specifically:
    - ▶ compensation orders<sup>10</sup> - in the magistrate's court the total compensation cannot exceed the limit for the conviction offence;
    - ▶ restitution orders.<sup>11</sup>

<sup>10</sup> s.131(2) Powers of Criminal Courts (Sentencing) Act 2000

<sup>11</sup> s.148 ibid

# Totality guideline

## Applicability of guideline

In accordance with section 120 of the Coroners and Justice Act 2009, the Sentencing Council issues this definitive guideline. It applies to all offenders, whose cases are dealt with on or after 11 June 2012.

Section 125(1) of the 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.”

This guideline applies when sentencing an offender for multiple offences or when sentencing an offender who is already serving an existing sentence. In these situations, the courts should apply the principle of totality.

## General principles

The principle of totality comprises two elements:

1. all courts, when sentencing for more than a single offence, should pass a total sentence which reflects *all* the offending behaviour before it and is just and proportionate. This is so whether the sentences are structured as concurrent or consecutive. Therefore, concurrent sentences will ordinarily be longer than a single sentence for a single offence.
2. it is usually impossible to arrive at a just and proportionate sentence for multiple offending simply by adding together notional single sentences. It is necessary to address the offending behaviour, together with the factors personal to the offender as a whole.

## Concurrent/consecutive sentences

There is no inflexible rule governing whether sentences should be structured as concurrent or consecutive components. The overriding principle is that the overall sentence must be just and proportionate.

## General approach (as applied to Determinate Custodial Sentences)

1. Consider the sentence for each individual offence, referring to the relevant sentencing guidelines.
2. Determine whether the case calls for concurrent or consecutive sentences.

**Concurrent sentences** will ordinarily be appropriate where:

### a) offences arise out of the same incident or facts.

*Examples include:*

- a single incident of dangerous driving resulting in injuries to multiple victims;<sup>12</sup>
- robbery with a weapon where the weapon offence is ancillary to the robbery and is not distinct and independent of it;<sup>13</sup>
- fraud and associated forgery;
- separate counts of supplying different types of drugs of the same class as part of the same transaction.

### b) there is a series of offences of the same or similar kind, especially when committed against the same person.

*Examples include:*

- repetitive small thefts from the *same* person, such as by an employee;
- repetitive benefit frauds of the same kind, committed in each payment period.

**Where concurrent sentences are to be passed** the sentence should reflect the overall criminality involved. The sentence should be appropriately aggravated by the presence of the associated offences.

*Examples include:*

- a single incident of dangerous driving resulting in injuries to multiple victims where there are separate charges relating to each victim. The sentences should generally be passed concurrently, but each sentence should be aggravated to take into account the harm caused;
- repetitive fraud or theft, where charged as a series of small frauds/thefts, would be properly considered in relation to the total amount of money obtained and the period of time over which the offending took place. The sentences should generally be passed concurrently, each one reflecting the overall seriousness;
- robbery with a weapon where the weapon offence is ancillary to the robbery and is not distinct and independent of it. The principal sentence for the robbery should properly reflect the presence of the weapon. The court must avoid double-counting and may deem it preferable for the possession of the weapon's offence to run concurrently to avoid the appearance of under-sentencing in respect of the robbery.<sup>14</sup>

<sup>12</sup> R v Lawrence (1989) 11 Cr App R (S) 580

<sup>13</sup> R v Poulton and Celaire [2002] EWCA Crim 2487; Attorney General's Reference No 21 & 22 of 2003 [2003] EWCA Crim 3089

<sup>14</sup> Attorney General's Reference Nos 21 & 22 of 2003

<sup>15</sup> Attorney General's Reference No 1 of 1990 (1990) 12 Cr App R (S) 245

<sup>16</sup> R v Millen (1980) 2 Cr App R (S) 357

**Consecutive sentences** will ordinarily be appropriate where:

**a) offences arise out of unrelated facts or incidents.**

*Examples include:*

- where the offender commits a theft on one occasion and a common assault against a different victim on a separate occasion;
- an attempt to pervert the course of justice in respect of another offence also charged;<sup>15</sup>
- a Bail Act offence;<sup>16</sup>
- any offence committed within the prison context;
- offences that are unrelated because whilst they were committed simultaneously they are distinct and there is an aggravating element that requires separate recognition, for example:
  - ▶ an assault on a constable committed to try to evade arrest for another offence also charged;<sup>17</sup>
  - ▶ where the defendant is convicted of drug dealing and possession of a firearm offence. The firearm offence is not the essence or the intrinsic part of the drugs offence and requires separate recognition;<sup>18</sup>
  - ▶ where the defendant is convicted of threats to kill in the context of an indecent assault on the same occasion, the threats to kill could be distinguished as a separate element.<sup>19</sup>

**b) offences that are of the same or similar kind but where the overall criminality will not sufficiently be reflected by concurrent sentences.**

*Examples include:*

- where offences committed against *different* people, such as repeated thefts involving attacks on several different shop assistants;<sup>20</sup>
- where offences of domestic violence or sexual offences are committed against the *same* individual.

**c) one or more offence(s) qualifies for a statutory minimum sentence and concurrent sentences would improperly undermine that minimum.<sup>21</sup>**

However, it is not permissible to impose consecutive sentences for offences committed at the same time in order to evade the statutory maximum penalty.<sup>22</sup>

**Where consecutive sentences are to be passed** add up the sentences for each offence and consider if the aggregate length is just and proportionate.

If the aggregate length is not just and proportionate the court should consider how to reach a just and proportionate sentence. There are a number of ways in which this can be achieved.

*Examples include:*

- when sentencing for similar offence types or offences of a similar level of severity the court can consider:
  - ▶ whether all of the offences can be proportionately reduced (with particular reference to the category ranges within sentencing guidelines) and passed consecutively;
  - ▶ whether, despite their similarity, a most serious principal offence can be identified and the other sentences can all be proportionately reduced (with particular reference to the category ranges within sentencing guidelines) and passed consecutively in order that the sentence for the lead offence can be clearly identified.

<sup>17</sup> R v Kastercum (1972) 56 Cr App R 298

<sup>18</sup> R v Poulton and Celaire [2002] EWCA Crim 2487; Attorney General's Reference Nos 21 & 22 of 2003 [2003] EWCA Crim 3089

<sup>19</sup> R v Fletcher [2002] 2 CAR (S) 127

<sup>20</sup> R v Jamieson & Jamieson [2008] EWCA Crim 2761

<sup>21</sup> R v Raza (2010) 1 Cr App R (S) 56

<sup>22</sup> R v Ralphs [2009] EWCA Crim 2555



- when sentencing for two or more offences of differing levels of seriousness the court can consider:
  - ▶ whether some offences are of such low seriousness in the context of the most serious offence(s) that they can be recorded as ‘no separate penalty’ (for example technical breaches or minor driving offences not involving mandatory disqualification);
  - ▶ whether some of the offences are of lesser seriousness and are unrelated to the most serious offence(s), that they can be ordered to run concurrently so that the sentence for the most serious offence(s) can be clearly identified.

**3. Test the overall sentence(s) against the requirement that they be just and proportionate.**

**4. Consider whether the sentence is structured in a way that will be best understood by all concerned with it.**

## Specific applications – Custodial sentences

EXISTING DETERMINATE SENTENCE, WHERE DETERMINATE SENTENCE TO BE PASSED	
Circumstance	Approach
<b>Offender serving a determinate sentence</b> (offence(s) committed before original sentence imposed)	Consider what the sentence length would have been if the court had dealt with the offences at the same time and ensure that the totality of the sentence is just and proportionate in all the circumstances. If it is not, an adjustment should be made to the sentence imposed for the latest offence.
<b>Offender serving a determinate sentence</b> (offence(s) committed after original sentence imposed)	Generally the sentence will be consecutive as it will have arisen out of an unrelated incident. The court must have regard to the totality of the offender's criminality when passing the second sentence, to ensure that the total sentence to be served is just and proportionate. Where a prisoner commits acts of violence in prison, any reduction for totality is likely to be minimal. <sup>23</sup>
<b>Offender serving a determinate sentence but released from custody</b>	The new sentence should start on the day it is imposed: s.265 Criminal Justice Act 2003 prohibits a sentence of imprisonment running consecutively to a sentence from which a prisoner has been released. The sentence for the new offence will take into account the aggravating feature that it was committed on licence. However, it must be commensurate with the new offence and cannot be artificially inflated with a view to ensuring that the offender serves a period in custody additional to the recall period (which will be an unknown quantity in most cases); <sup>24</sup> this is so even if the new sentence will, in consequence, add nothing to the period actually served.
<b>Offender subject to a s.116 return to custody</b> The powers under s.116 Powers Criminal Court (Sentencing) Act 2000 remain available where the offender: <ul style="list-style-type: none"> <li>• has been released from a sentence of less than 12 months;<sup>25</sup></li> <li>• committed his offence before 4 April 2005 and is released from a sentence of less than 4 years;<sup>26</sup></li> <li>• committed his offence before 4 April 2005 and is released from a sentence of over 4 years following a Parole Board recommendation, or after serving two-thirds of his sentence under section 33(b) Criminal Justice Act 1991.<sup>27</sup></li> </ul>	The period of return under s.116 can either be ordered to be served before or concurrently with the sentence for the new offence. In either case the period of return shall be disregarded in determining the appropriate length of the new sentence.
<b>Offender sentenced to a determinate term and subject to an existing suspended sentence order</b>	Where an offender commits an additional offence during the operational period of a suspended sentence and the court orders the suspended sentence to be activated, the additional sentence will generally be consecutive to the activated suspended sentence, as it will arise out of unrelated facts.

<sup>23</sup> R v Ali (1998) 2 Cr App R 123

<sup>24</sup> R v Costello [2010] EWCA Crim 371

<sup>25</sup> s.116 of the Powers of Criminal Courts (Sentencing) Act 2000 was repealed by s.332 of the Criminal Justice Act 2003 and Part 7 of Schedule 37. However, the effect of the saving in paragraph 29 of Schedule 2 to the Commencement No.8 and Transitional and Savings Provisions Order 2005 was that s.116 continued to apply where the earlier sentence was imposed for an offence committed before 4 April 2005, or was for a term of less than 12 months.

<sup>26</sup> *ibid*

<sup>27</sup> *Ibid*. The Criminal Justice & Immigration Act 2008 contains a further transitional provision. Paragraph 4 of Schedule 26 inserts an exclusion into s.116 which prevents prisoners released under s.33(1A) of the 1991 Act (i.e eligible discretionary conditional release prisoners, who are released automatically at ½ point of their sentence, rather than on a recommendation from the Parole Board) from being returned to prison under s.116.

## Specific applications – Non-custodial sentences

MULTIPLE FINES FOR NON-IMPRISONABLE OFFENCES	
Circumstance	Approach
<p><b>Offender convicted of more than one offence where a fine is appropriate</b></p>	<p>The total fine is inevitably cumulative.</p> <p>The court should determine the fine for each individual offence based on the seriousness of the offence<sup>28</sup> and taking into account the circumstances of the case including, the financial circumstances of the offender so far as they are known, or appear, to the court.<sup>29</sup></p> <p>The court should add up the fines for each offence and consider if they are just and proportionate.</p> <p>If the aggregate total is not just and proportionate the court should consider how to reach a just and proportionate fine. There are a number of ways in which this can be achieved.</p> <p><i>For example:</i></p> <ul style="list-style-type: none"> <li>• where an offender is to be fined for two or more offences that arose out of the same incident or where there are multiple offences of a repetitive kind, especially when committed against the same person, it will often be appropriate to impose for the most serious offence a fine which reflects the totality of the offending where this can be achieved within the maximum penalty for that offence. No separate penalty should be imposed for the other offences;</li> <li>• where an offender is to be fined for two or more offences that arose out of different incidents, it will often be appropriate to impose a separate fine for each of the offences. The court should add up the fines for each offence and consider if they are just and proportionate. If the aggregate amount is not just and proportionate the court should consider whether all of the fines can be proportionately reduced. Separate fines should then be passed.</li> </ul> <p>Where separate fines are passed, the court must be careful to ensure that there is no double-counting.<sup>30</sup></p> <p>Where compensation is being ordered, that will need to be attributed to the relevant offence as will any necessary ancillary orders.</p>
<p><b>Multiple offences attracting fines – crossing the community threshold</b></p>	<p>If the offences being dealt with are all imprisonable, then the community threshold can be crossed by reason of multiple offending, when it would not be crossed for a single offence.<sup>31</sup> However, if the offences are non-imprisonable (e.g. driving without insurance) the threshold cannot be crossed.<sup>32</sup></p>

<sup>28</sup> s.164(2) Criminal Justice Act 2003

<sup>29</sup> s.164(3) *ibid*

<sup>30</sup> R v Pounton [2008] EWCA Crim 513

<sup>31</sup> s.148(1) Criminal Justice Act 2003

<sup>32</sup> s.150A *ibid* (in force since 14 July 2008) restricts the power to make a community order by limiting it to cases where the offence is punishable with imprisonment.

FINES IN COMBINATION WITH OTHER SENTENCES	
Circumstance	Approach
<p><b>A fine may be imposed in addition to any other penalty for the same offence except:</b></p>	<ul style="list-style-type: none"> <li>• a hospital order;<sup>33</sup></li> <li>• a discharge;<sup>34</sup></li> <li>• a sentence fixed by law<sup>35</sup> (minimum sentences, EPP, IPP);</li> <li>• a minimum term imposed under s.110(2) or s.111(2) of the Powers of Criminal Courts (Sentencing) Act 2000;<sup>36</sup></li> <li>• a life sentence imposed under s.225(2) Criminal Justice Act 2003 or a sentence of detention for life for an offender under 18 under s.226(2) Criminal Justice Act 2003.<sup>37</sup></li> </ul>
<p><b>Fines and determinate custodial sentences</b></p>	<p>A fine should not generally be imposed in combination with a custodial sentence because of the effect of imprisonment on the means of the defendant. However, exceptionally, it may be appropriate to impose a fine in addition to a custodial sentence where:</p> <ul style="list-style-type: none"> <li>• the sentence is suspended;</li> <li>• a confiscation order is not contemplated; <b>and</b></li> <li>• there is no obvious victim to whom compensation can be awarded; <b>and</b></li> <li>• the offender has, or will have, resources from which a fine can be paid.</li> </ul>

<sup>33</sup> s.37(8) Mental Health Act 1983

<sup>34</sup> R v McClelland [1951] 1 All ER 557

<sup>35</sup> s.163 Criminal Justice Act 2003

<sup>36</sup> ibid

<sup>37</sup> ibid

<sup>38</sup> (footnote deleted)

COMMUNITY ORDERS	
Circumstance	Approach
<b>Multiple offences attracting community orders – crossing the custody threshold</b>	If the offences are all imprisonable and none of the individual sentences merit a custodial sentence, the custody threshold can be crossed by reason of multiple offending. <sup>39</sup> If the custody threshold has been passed, the court should refer to the offence ranges in sentencing guidelines for the offences and to the general principles.
<b>Multiple offences, where one offence would merit immediate custody and one offence would merit a community order</b>	A community order should not be ordered to run consecutively to or concurrently with a custodial sentence. Instead the court should generally impose one custodial sentence that is aggravated appropriately by the presence of the associated offence(s). The alternative option is to impose no separate penalty for the offence of lesser seriousness.
<b>Offender convicted of more than one offence where a community order is appropriate</b>	<p>A community order is a composite package rather than an accumulation of sentences attached to individual counts. The court should generally impose a single community order that reflects the overall criminality of the offending behaviour.</p> <p>Where it is necessary to impose more than one community order, these should be ordered to run concurrently and for ease of administration, each of the orders should be identical.</p>
<b>Offender convicted of an offence while serving a community order</b>	<p>The power to deal with the offender depends on his being convicted whilst the order is still in force;<sup>40</sup> it does not arise where the order has expired, even if the additional offence was committed whilst it was still current.</p> <p>If an offender, in respect of whom a community order made by a magistrates' court is in force, is convicted by a magistrates' court of an additional offence, the magistrates' court should ordinarily revoke the previous community order and sentence afresh for both the original and the additional offence.</p> <p>Where an offender, in respect of whom a community order made by a Crown Court is in force, is convicted by a magistrates' court, the magistrates' court may, and ordinarily should, commit the offender to the Crown Court, in order to allow the Crown Court to re-sentence for the original offence and the additional offence.</p> <p>The sentencing court should consider the overall seriousness of the offending behaviour taking into account the additional offence and the original offence. The court should consider whether the combination of associated offences is sufficiently serious to justify a custodial sentence.</p> <p>If the court does not consider that custody is necessary, it should impose a single community order that reflects the overall totality of criminality. The court must take into account the extent to which the offender complied with the requirements of the previous order.</p>

<sup>39</sup> s.148(1) Criminal Justice Act 2003

<sup>40</sup> Paragraphs 21-23 of Schedule 8 Criminal Justice Act 2003

<b>DISQUALIFICATIONS FROM DRIVING</b>	
Circumstance	Approach
<p><b>Offender convicted of two or more obligatory disqualification offences (s.34(1) Road Traffic Offender Act 1988)</b></p>	<p>The court must impose an order of disqualification for each offence unless for special reasons it does not disqualify the offender.<sup>41</sup></p> <p>All orders of disqualification imposed by the court on the same date take effect immediately and cannot be ordered to run consecutively to one another.</p> <p>The court should take into account all offences when determining the disqualification periods and should generally impose like periods for each offence.</p>
<p><b>Offender convicted of two or more offences involving either:</b></p> <p>a) discretionary disqualification and obligatory endorsement from driving; or  b) obligatory disqualification but the court for special reasons does not disqualify the offender and the penalty points to be taken into account number 12 or more (s.28 and 35 Road Traffic Offender Act 1988)</p>	<p>Where an offender is convicted on the same occasion of more than one offence to which s.35(1) Road Traffic Offender Act 1988 applies, only one disqualification shall be imposed on him.<sup>42</sup> However, the court must take into account all offences when determining the disqualification period. For the purposes of appeal, any disqualification imposed shall be treated as an order made on conviction of each of the offences.<sup>43</sup></p>
<p><b>Other combinations involving two or more offences involving discretionary disqualification</b></p>	<p>As orders of disqualification take effect immediately, it is generally desirable for the court to impose a single disqualification order that reflects the overall criminality of the offending behaviour.</p>

<sup>41</sup> s.34(1) Road Traffic Offender Act 1988

<sup>42</sup> s.34(3) *ibid*

<sup>43</sup> *ibid*

<b>COMPENSATION ORDERS</b>	
Circumstance	Approach
<b>Global compensation orders</b>	The court should not fix a global compensation figure unless the offences were committed against the same victim. <sup>44</sup> Where there are competing claims for limited funds, the total compensation available should normally be apportioned on a pro rata basis. <sup>45</sup>
<b>The court may combine a compensation order with any other form of order.</b>	
<b>Compensation orders and fines</b>	Priority is given to the imposition of a compensation order over a fine. <sup>46</sup> This does not affect sentences other than fines. This means that the fine should be reduced or, if necessary, dispensed with altogether, to enable the compensation to be paid.
<b>Compensation orders and confiscation orders</b>	A compensation order can be combined with a confiscation order where the amount that may be realised is sufficient. If such an order is made, priority should be given to compensation. <sup>47</sup>
<b>Compensation orders and community orders</b>	A compensation order can be combined with a community order.
<b>Compensation orders and suspended sentence orders</b>	A compensation order can be combined with a suspended sentence order. <sup>48</sup>
<b>Compensation orders and custody</b>	A compensation order can be combined with a sentence of immediate custody where the offender is clearly able to pay or has good prospects of employment on his release from custody.

<sup>44</sup> R v Warton [1976] Crim LR 520

<sup>45</sup> R v Miller [1976] Crim LR 694

<sup>46</sup> s.130(12) Powers of Criminal Courts (Sentencing) Act 2000

<sup>47</sup> R v Mitchell [2001] Crim LR 239

<sup>48</sup> s.118(5) Powers of Criminal Courts (Sentencing) Act 2000

## Alcohol sale offences

Triable only summarily:

Maximum: Level 3 fine (s.141)

Level 5 fine (ss.146 and 147)

### Offence seriousness (culpability and harm)

#### A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Sale to a child (i.e. person under 18)/to a drunk person	Band B fine	Band A fine to band C fine

**Note:** refer to page 150 for approach to fines for offences committed for commercial purposes

### Offence seriousness (culpability and harm)

#### B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

<p><b>Factors indicating higher culpability</b></p> <ol style="list-style-type: none"> <li>1. No attempt made to establish age</li> <li>2. Spirits/high alcohol level of drink</li> <li>3. Drunk person highly intoxicated</li> <li>4. Large quantity of alcohol supplied</li> <li>5. Sale intended for consumption by group of children/drunk people</li> <li>6. Offender in senior or management position</li> </ol> <p><b>Factors indicating greater degree of harm</b></p> <ol style="list-style-type: none"> <li>1. Younger child/children</li> <li>2. Drunk person causing distress to others</li> <li>3. Drunk person aggressive</li> </ol>	
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### Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

### Consider a reduction for a guilty plea

### Consider ancillary orders, including forfeiture or suspension of personal liquor licence

Refer to pages 168-174 for guidance on available ancillary orders

### Decide sentence Give reasons

#### Note

Section 23 of the Violent Crime Reduction Act 2006 created a new offence of persistently selling alcohol to children, which came into force on 6 April 2007. This is committed if, on three or more different occasions within a period of three consecutive months, alcohol is unlawfully sold on the same premises to a person under 18. The offence is summary only and the maximum penalty is a £10,000 fine. **Consult your legal adviser for guidance on the approach to sentencing and the court's powers in relation to liquor licences.**



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## Animal cruelty

Animal Welfare Act 2006, s.4 (unnecessary suffering); s.8 (fighting etc.); s.9 (breach of duty of person responsible for animal to ensure welfare)

Triable only summarily:

Maximum: £20,000 fine and/or 6 months (ss.4 and 8)

Level 5 fine and/or 6 months (s.9)

### Offence seriousness (culpability and harm)

#### A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
One impulsive act causing little or no injury; short term neglect	Band C fine	Band B fine to medium level community order
Several incidents of deliberate ill-treatment/frightening animal(s); medium term neglect	High level community order	Medium level community order to 12 weeks custody
Attempt to kill/torture; animal baiting/conducting or permitting cock-fighting etc.; prolonged neglect	18 weeks custody	12 to 26 weeks custody

### Offence seriousness (culpability and harm)

#### B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

<p><b>Factors indicating higher culpability</b></p> <ol style="list-style-type: none"> <li>1. Offender in position of special responsibility</li> <li>2. Adult involves children in offending</li> <li>3. Animal(s) kept for livelihood</li> <li>4. Use of weapon</li> <li>5. Offender ignored advice/warnings</li> <li>6. Offence committed for commercial gain</li> </ol> <p><b>Factors indicating greater degree of harm</b></p> <ol style="list-style-type: none"> <li>1. Serious injury or death</li> <li>2. Several animals affected</li> </ol>	<p><b>Factors indicating lower culpability</b></p> <ol style="list-style-type: none"> <li>1. Offender induced by others</li> <li>2. Ignorance of appropriate care</li> <li>3. Offender with limited capacity</li> </ol>
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### Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

### Consider a reduction for a guilty plea

### Consider ancillary orders, including compensation

Refer to pages 168-174 for guidance on available ancillary orders

### Consider disqualification from ownership of animal

### Decide sentence

### Give reasons

## Arson (criminal damage by fire)

Triable either way:

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: Life

**Where offence committed in domestic context, refer to page 177 for guidance**

<b>Offence seriousness (culpability and harm)</b>		
<b>A. Identify the appropriate starting point</b>		
Starting points based on first time offender pleading not guilty		
Examples of nature of activity	Starting point	Range
Minor damage by fire	High level community order	Medium level community order to 12 weeks custody
Moderate damage by fire	12 weeks custody	6 to 26 weeks custody
Significant damage by fire	Crown Court	Crown Court

<b>Offence seriousness (culpability and harm)</b>	
<b>B. Consider the effect of aggravating and mitigating factors (other than those within examples above)</b>	
Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but <b>these lists are not exhaustive</b>	
<p><b>Factor indicating higher culpability</b></p> <ol style="list-style-type: none"> <li>1. Revenge attack</li> </ol> <p><b>Factors indicating greater degree of harm</b></p> <ol style="list-style-type: none"> <li>1. Damage to emergency equipment</li> <li>2. Damage to public amenity</li> <li>3. Significant public or private fear caused e.g. in domestic context</li> </ol>	<p><b>Factor indicating lower culpability</b></p> <ol style="list-style-type: none"> <li>1. Damage caused recklessly</li> </ol>

**Form a preliminary view of the appropriate sentence, then consider offender mitigation**  
Common factors are identified in the pullout card

**Consider a reduction for a guilty plea**

**Consider ancillary orders, including compensation**  
Refer to pages 168-174 for guidance on available ancillary orders

**Decide sentence**  
**Give reasons**

## Anti-social behaviour order, breach of – factors to take into consideration

This guideline and accompanying notes are taken from the Sentencing Guidelines Council's definitive guideline *Breach of an Anti-Social Behaviour Order*, published 9 December 2008

### Key factors

- (a) An ASBO may be breached in a very wide range of circumstances and may involve one or more terms not being complied with. The examples given below are intended to illustrate how the scale of the conduct that led to the breach, taken as a whole, might come within the three levels of seriousness:
- **No harm caused or intended** – in the absence of intimidation or the causing of fear of violence, breaches involving being drunk or begging may be at this level, as may prohibited use of public transport or entry into a prohibited area, where there is no evidence that harassment, alarm or distress was caused or intended.
  - **Lesser degree of harm intended or likely** – examples may include lesser degrees of threats or intimidation, the use of seriously abusive language, or causing more than minor damage to property.
  - **Serious harm caused or intended** – breach at this level of seriousness will involve the use of violence, significant threats or intimidation or the targeting of individuals or groups of people in a manner that leads to a fear of violence.
- (b) The suggested starting points are based on the assumption that the offender had the highest level of culpability.
- (c) In the most serious cases, involving repeat offending and a breach causing serious harassment together with the presence of several aggravating factors, such as the use of violence, a sentence beyond the highest range will be justified.
- (d) When imposing a community order, the court must ensure that the requirements imposed are proportionate to the seriousness of the breach, compatible with each other, and also with the prohibitions of the ASBO if the latter is to remain in force. Even where the threshold for a custodial sentence is crossed, a custodial sentence is not inevitable.
- (e) An offender may be sentenced for more than one offence of breach, which occurred on different days. While consecutive sentences may be imposed in such cases, the overall sentence should reflect the totality principle.

## Anti-social behaviour order, breach of

Triable either way:

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: 5 years

**Note: A conditional discharge is not available as a sentence for this offence**

### Offence seriousness (culpability and harm)

#### A. Identify the appropriate starting point

Starting points based on first time offender\* pleading not guilty

Examples of nature of activity	Starting point	Range
Breach where no harassment, alarm or distress was caused or intended	Low level community order	Band B fine to medium level community order
Breach involving a lesser degree of actual or intended harassment, alarm or distress than in the box below, or where such harm would have been likely had the offender not been apprehended	6 weeks custody	Medium level community order to 26 weeks custody
Breach involving serious actual or intended harassment, alarm or distress	26 weeks custody	Custody threshold to Crown Court

### Offence seriousness (culpability and harm)

#### B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

Factor indicating higher culpability	Factor indicating lower culpability
<ol style="list-style-type: none"> <li>Offender has a history of disobedience to court orders</li> <li>Breach was committed immediately or shortly after the order was made</li> <li>Breach was committed subsequent to earlier breach proceedings arising from the same order</li> <li>Targeting of a person the order was made to protect or a witness in the original proceedings</li> </ol>	<ol style="list-style-type: none"> <li>Breach occurred after a long period of compliance</li> <li>The prohibition(s) breached was not fully understood, especially where an interim order was made without notice</li> </ol>

#### Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

#### Consider a reduction for a guilty plea

#### Consider ancillary orders, including compensation

Refer to pages 168-174 for guidance on available ancillary orders

#### Decide sentence Give reasons

\*For the purposes of this guideline a “first time offender” is one who does not have a previous conviction for breach of an ASBO

## Bail, failure to surrender – factors to take into consideration

This guideline and accompanying notes are taken from the Sentencing Guidelines Council's definitive guideline *Fail to Surrender to Bail*, published 29 November 2007

### Key factors

- (a) Whilst the approach to sentencing should generally be the same whether the offender failed to surrender to a court or to a police station and whether the offence is contrary to ss.6(1) or 6(2), the court must examine all the relevant circumstances.
- (b) The following factors may be relevant when assessing the *harm* caused by the offence:
- Where an offender fails to appear for a first court hearing but attends shortly afterwards, the only harm caused is likely to be the financial cost to the system. Where a case could not have proceeded even if the offender had surrendered to bail, this should be taken into account.
  - Where an offender appears for trial on the wrong day but enters a late guilty plea enabling the case to be disposed of to some degree at least, the harm caused by the delay may be offset by the benefits stemming from the change of plea.
  - The most serious harm is likely to result when an offender fails to appear for trial, especially if this results in witnesses being sent away. Where it has been possible to conclude proceedings in the absence of the offender, this may be relevant to the assessment of harm caused.
  - The level of harm is likely to be assessed as high where an offender fails to appear for sentence and is also seen to be flouting the authority of the court, such as where the avoidance of sentence results in the consequential avoidance of ancillary orders such as disqualification from driving, the payment of compensation or registration as a sex offender. This may increase the level of harm whenever the offender continues to present a risk to public safety.
  - Whilst the seriousness of the original offence does not of itself aggravate or mitigate the seriousness of the offence of failing to surrender, the circumstances surrounding the original offence may be relevant in assessing the harm arising from the Bail Act offence.
  - The circumstances in which bail to return to a police station is granted are less formal than the grant of court bail and the history of the individual case should be examined. There may be less *culpability* where bail has been enlarged on a number of occasions and less *harm* if court proceedings are not significantly delayed.
- (c) Where the failure to surrender to custody was 'deliberate':
- at or near the bottom of the sentencing range will be cases where the offender gave no thought at all to the consequences, or other mitigating factors are present, and the degree of delay or interference with the progress of the case was not significant in all the circumstances;
  - at or near the top of the range will be cases where aggravating factors 1, 2 or 4 opposite are present if there is also a significant delay and/or interference with the progress of the case.
- (d) A previous conviction that is likely to be 'relevant' for the purposes of this offence is one which demonstrates failure to comply with an order of a court.
- (e) Acquittal of the original offence does not automatically mitigate the Bail Act offence.
- (f) The fact that an offender has a disorganised or chaotic lifestyle should not normally be treated as offence mitigation, but may be regarded as offender mitigation depending on the particular facts.
- (g) A misunderstanding which does not amount to a defence may be a mitigating factor whereas a mistake on the part of the offender is his or her own responsibility.
- (h) Where an offender has literacy or language difficulties, these may be mitigation (where they do not amount to a defence) where potential problems were not identified and/or appropriate steps were not taken to mitigate the risk in the circumstances as known at the time that bail was granted.
- (i) An offender's position as the sole or primary carer of dependant relatives may be offender mitigation when it is the reason why the offender failed to surrender to custody.
- (j) The sentence for this offence should usually be in addition to any sentence for the original offence. Where custodial sentences are being imposed for a Bail Act offence and the original offence at the same time, the normal approach should be for the sentences to be consecutive. The length of any custodial sentence imposed must be commensurate with the seriousness of the offence(s).
- (k) If an offence is serious enough to justify the imposition of a community order, a curfew requirement with an electronic monitoring requirement may be particularly appropriate – see pages 160-162.

# Bail, failure to surrender

Maximum when tried summarily: Level 5 fine and/or 3 months  
 Maximum when tried on indictment: 12 months

In certain circumstances, a magistrates' court may commit to the Crown Court for sentence. **Consult your legal adviser for guidance.**

<b>Offence seriousness (culpability and harm)</b>		
<b>A. Identify the appropriate starting point</b>		
Starting points based on first time offender pleading not guilty		
Examples of nature of activity	Starting point	Range
Surrenders late on day but case proceeds as planned	Band A fine	Band A fine to Band B fine
Negligent or non-deliberate failure to attend causing delay and/or interference with the administration of justice	Band C fine	Band B fine to medium level community order
Deliberate failure to attend causing delay and/or interference with the administration of justice  <i>The type and degree of harm actually caused will affect where in the range the case falls – see note (c) opposite</i>	14 days custody	Low level community order to 10 weeks custody

<b>Offence seriousness (culpability and harm)</b>	
<b>B. Consider the effect of aggravating and mitigating factors (other than those within examples above)</b>	
Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but <b>these lists are not exhaustive</b>	
<b>Factors indicating higher culpability</b> 1. Serious attempts to evade justice 2. Determined attempt seriously to undermine the course of justice 3. Previous relevant convictions and/or breach of court orders or police bail  <b>Factor indicating greater degree of harm</b> 4. Lengthy absence	<b>Factors indicating lower culpability</b> Where not amounting to a defence: 1. Misunderstanding 2. Failure to comprehend bail significance or requirements 3. Caring responsibilities – see note (i) opposite  <b>Factor indicating lesser degree of harm</b> 4. Prompt voluntary surrender

**Form a preliminary view of the appropriate sentence, then consider offender mitigation**  
 Common factors are identified in the pullout card

**Consider a reduction for a guilty plea**

**Decide sentence  
Give reasons**

In appropriate cases, a magistrates' court may impose one day's detention:  
 Magistrates' Courts Act 1980, s.135

## Bladed article/offensive weapon, possession of – factors to take into consideration

These guidelines and accompanying notes are drawn from the Court of Appeal's decision in *R v Cellaire and Poulton* [2003] 1 Cr App R (S) 116

### Key factors

- (a) Concurrent sentences may be appropriate if the weapons offence is ancillary to a more serious offence; consecutive sentences may be appropriate if the offences are distinct and independent.  
**Refer to page 18g and consult your legal adviser for guidance.**
- (b) When assessing offence seriousness, consider the offender's intention, the circumstances of the offence and the nature of the weapon involved.
- (c) Some weapons are inherently more dangerous than others but the nature of the weapon is not the primary determinant of offence seriousness. A relatively less dangerous weapon, such as a billiard cue or knuckle-duster, may be used to create fear and such an offence may be at least as serious as one in which a more obviously dangerous weapon, such as a knife or an acid spray, is being carried for self-defence or no actual attempt has been made by the offender to use it.
- (d) Nevertheless, the fact that the offender was carrying a weapon which is offensive per se may shed light on his or her intentions.



## Bladed article/offensive weapon, possession of

Triable either way:

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: 4 years

### Offence seriousness (culpability and harm)

#### A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Weapon not used to threaten or cause fear	High level community order	Band C fine to 12 weeks custody
Weapon not used to threaten or cause fear but offence committed in dangerous circumstances	6 weeks custody	High level community order to Crown Court
Weapon used to threaten or cause fear and offence committed in dangerous circumstances	Crown Court	Crown Court

### Offence seriousness (culpability and harm)

#### B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

##### Factors indicating higher culpability

1. Particularly dangerous weapon
2. Specifically planned use of weapon to commit violence, threaten violence or intimidate
3. Offence motivated by hostility towards minority individual or group
4. Offender under influence of drink or drugs
5. Offender operating in group or gang

##### Factors indicating greater degree of harm

1. Offence committed at school, hospital or other place where vulnerable persons may be present
2. Offence committed on premises where people carrying out public services
3. Offence committed on or outside licensed premises
4. Offence committed on public transport
5. Offence committed at large public gathering, especially where there may be risk of disorder

##### Factors indicating lower culpability

1. Weapon carried only on temporary basis
2. Original possession legitimate e.g. in course of trade or business

### Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

### Consider a reduction for a guilty plea

### Consider ancillary orders, including compensation

Refer to pages 168-174 for guidance on available ancillary orders

### Consider deprivation of property (including weapon)

### Decide sentence

### Give reasons

# Communication network offences

Communications Act 2003, ss.127(1) and 127(2)

Triable only summarily:  
Maximum: Level 5 fine and/or 6 months

**Offence seriousness (culpability and harm)**  
**A. Identify the appropriate starting point**  
Starting points based on first time offender pleading not guilty

**Sending grossly offensive, indecent, obscene or menacing messages (s.127(1))**

Examples of nature of activity	Starting point	Range
Single offensive, indecent, obscene or menacing call of short duration, having no significant impact on receiver	Band B fine	Band A fine to band C fine
Single call where extreme language used, having only moderate impact on receiver	Medium level community order	Low level community order to high level community order
Single call where extreme language used and substantial distress or fear caused to receiver; OR One of a series of similar calls as described in box above	6 weeks custody	High level community order to 12 weeks custody

**Sending false message/persistent use of communications network for purpose of causing annoyance, inconvenience or needless anxiety (s.127(2))**

Examples of nature of activity	Starting point	Range
Persistent silent calls over short period to private individual, causing inconvenience or annoyance	Band B fine	Band A fine to band C fine
Single hoax call to public or private organisation resulting in moderate disruption or anxiety	Medium level community order	Low level community order to high level community order
Single hoax call resulting in major disruption or substantial public fear or distress; OR One of a series of similar calls as described in box above	12 weeks custody	High level community order to 18 weeks custody

**Offence seriousness (culpability and harm)**  
**B. Consider the effect of aggravating and mitigating factors (other than those within examples above)**

Common aggravating and mitigating factors are identified in the pullout card

**Form a preliminary view of the appropriate sentence, then consider offender mitigation**

Common factors are identified in the pullout card

**Consider a reduction for a guilty plea**

**Consider ancillary orders, including compensation**  
Refer to pages 168-174 for guidance on available ancillary orders

**Decide sentence**  
**Give reasons**

These notes are taken from the Sentencing Guidelines Council's definitive guideline *New Sentences: Criminal Justice Act 2003*, published 16 December 2004

**Options in breach proceedings:**

When dealing with breaches of community orders for offences committed after 4 April 2005, the court must either:

- **amend the terms of the original order so as to impose more onerous requirements.** The court may extend the duration of particular requirements within the order, but it cannot extend the overall length of the original order; or
- **revoke the original order and proceed to sentence for the original offence.** Where an offender has wilfully and persistently failed to comply with an order made in respect of an offence that is not punishable by imprisonment, the court can impose up to six months' custody.<sup>1</sup>

**Approach:**

- having decided that a community order is commensurate with the seriousness of the offence, the primary objective when sentencing for breach of requirements is to ensure that those requirements are completed;
- a court sentencing for breach must take account of the extent to which the offender has complied with the requirements of the original order, the reasons for the breach, and the point at which the breach has occurred;
- if increasing the onerousness of requirements, sentencers should take account of the offender's ability to comply and should avoid precipitating further breach by overloading the offender with too many or conflicting requirements;
- there may be cases where the court will need to consider re-sentencing to a differently constructed community order in order to secure compliance with the purposes of the original sentence, perhaps where there has already been partial compliance or where events since the sentence was imposed have shown that a different course of action is likely to be effective;
- where available, custody should be the last resort, reserved for those cases of deliberate and repeated breach where all reasonable efforts to ensure that the offender complies have failed.

Where the original order was made by the Crown Court, breach proceedings must be commenced in that court unless the order provided that any failure to comply with its requirements may be dealt with in a magistrates' court. **Consult your legal adviser for further guidance when dealing with breach of a community order made in the Crown Court.**

<sup>1</sup> Criminal Justice Act 2003, sch.8, para. 9(1)(c)

## Criminal damage (other than by fire)

Criminal Damage Act 1971, s.1(1)

## Racially or religiously aggravated criminal damage

Crime and Disorder Act 1998, s.30

**Criminal damage:** triable only summarily if value involved does not exceed £5,000:  
Maximum: Level 4 fine and/or 3 months

Triable either way if value involved exceeds £5,000:  
Maximum when tried summarily: Level 5 fine and/or 6 months  
Maximum when tried on indictment: 10 years

**Racially or religiously aggravated criminal damage:** triable either way  
Maximum when tried summarily: Level 5 fine and/or 6 months  
Maximum when tried on indictment: 14 years

Where offence committed in domestic context, refer to page 177 for guidance

### Offence seriousness (culpability and harm)

#### A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Minor damage e.g. breaking small window; small amount of graffiti	Band B fine	Conditional discharge to band C fine
Moderate damage e.g. breaking large plate-glass or shop window; widespread graffiti	Low level community order	Band C fine to medium level community order
Significant damage up to £5,000 e.g. damage caused as part of a spree	High level community order	Medium level community order to 12 weeks custody
Damage between £5,000 and £10,000	12 weeks custody	6 to 26 weeks custody
Damage over £10,000	Crown Court	Crown Court

### Offence seriousness (culpability and harm)

#### B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

<b>Factors indicating higher culpability</b> <ol style="list-style-type: none"><li>1. Revenge attack</li><li>2. Targeting vulnerable victim</li></ol> <b>Factors indicating greater degree of harm</b> <ol style="list-style-type: none"><li>1. Damage to emergency equipment</li><li>2. Damage to public amenity</li><li>3. Significant public or private fear caused e.g. in domestic context</li></ol>	<b>Factors indicating lower culpability</b> <ol style="list-style-type: none"><li>1. Damage caused recklessly</li><li>2. Provocation</li></ol>
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### Form a preliminary view of the appropriate sentence

**If offender charged and convicted of the racially or religiously aggravated offence, increase the sentence to reflect this element**

Refer to pages 178-179 for guidance

### Consider offender mitigation

Common factors are identified in the pullout card

### Consider a reduction for a guilty plea

### Consider ancillary orders, including compensation

Refer to pages 168-174 for guidance on available ancillary orders

### Decide sentence

Give reasons

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## Cruelty to a child – factors to take into consideration

This guideline and accompanying notes are taken from the Sentencing Guidelines Council's definitive guidelines *Overarching Principles: Assaults on children and Cruelty to a child*, published 20 February 2008

### Key factors

- (a) The same starting point and sentencing range is proposed for offences which might fall into the four categories (assault; ill-treatment or neglect; abandonment; and failure to protect). These are designed to take into account the fact that the victim is particularly vulnerable, assuming an abuse of trust or power and the likelihood of psychological harm, and designed to reflect the seriousness with which society as a whole regards these offences.
- (b) As noted above, the starting points have been calculated to reflect the likelihood of psychological harm and this cannot be treated as an aggravating factor. Where there is an especially serious physical or psychological effect on the victim, even if unintended, this should increase sentence.
- (c) The normal sentencing starting point for an offence of child cruelty should be a custodial sentence. The length of that sentence will be influenced by the circumstances in which the offence took place.
- (d) However, in considering whether a custodial sentence is the most appropriate disposal, the court should take into account any available information concerning the future care of the child.
- (e) Where the offender is the sole or primary carer of the victim or other dependants, this potentially should be taken into account for sentencing purposes, regardless of whether the offender is male or female. In such cases, an immediate custodial sentence may not be appropriate.
- (f) The most relevant areas of personal mitigation are likely to be:
  - Mental illness/depression
  - Inability to cope with the pressures of parenthood
  - Lack of support
  - Sleep deprivation
  - Offender dominated by an abusive or stronger partner
  - Extreme behavioural difficulties in the child, often coupled with a lack of support
  - Inability to secure assistance or support services in spite of every effort having been made by the offender.

Some of the factors identified above, in particular sleep deprivation, lack of support and an inability to cope, could be regarded as an inherent part of caring for children, especially when a child is very young and could be put forward as mitigation by most carers charged with an offence of child cruelty. It follows that, before being accepted as mitigation, there must be evidence that these factors were present to a high degree and had an identifiable and significant impact on the offender's behaviour.

# Cruelty to a child

Triable either way:  
 Maximum when tried summarily: Level 5 fine and/or 6 months  
 Maximum when tried on indictment: 10 years

**Offence seriousness (culpability and harm)**  
**A. Identify the appropriate starting point**  
 Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
(i) Short term neglect or ill-treatment (ii) Single incident of short-term abandonment (iii) Failure to protect a child from any of the above	12 weeks custody	Low level community order to 26 weeks custody
(i) Assault(s) resulting in injuries consistent with ABH (ii) More than one incident of neglect or ill-treatment (but not amounting to long-term behaviour) (iii) Single incident of long-term abandonment OR regular incidents of short-term abandonment (the longer the period of long-term abandonment or the greater the number of incidents of short-term abandonment, the more serious the offence) (iv) Failure to protect a child from any of the above	Crown Court	26 weeks custody to Crown Court
(i) Series of assaults (ii) Protracted neglect or ill-treatment (iii) Serious cruelty over a period of time (iv) Failure to protect a child from any of the above	Crown Court	Crown Court

**Offence seriousness (culpability and harm)**  
**B. Consider the effect of aggravating and mitigating factors (other than those within examples above)**  
 Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

<ol style="list-style-type: none"> <li>1. Targeting one particular child from the family</li> <li>2. Sadistic behaviour</li> <li>3. Threats to prevent the victim from reporting the offence</li> <li>4. Deliberate concealment of the victim from the authorities</li> <li>5. Failure to seek medical help</li> </ol>	<ol style="list-style-type: none"> <li>1. Seeking medical help or bringing the situation to the notice of the authorities</li> </ol>
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**Form a preliminary view of the appropriate sentence, then consider offender mitigation**  
 Common factors are identified in the pullout card – see also note (f) opposite

**Consider a reduction for a guilty plea**

**Consider ancillary orders, including compensation**  
 Refer to pages 168-174 for guidance on available ancillary orders

**Decide sentence**  
**Give reasons**

## Drugs – class A – fail to attend/ remain for initial assessment

Drugs Act 2005, s.12

Triable only summarily:

Maximum: Level 4 fine and/or 3 months

### Offence seriousness (culpability and harm)

#### A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Failure to attend at the appointed place and time	Medium level community order	Band C fine to high level community order

### Offence seriousness (culpability and harm)

#### B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card –  
the following may be particularly relevant but **these lists are not exhaustive**

Factors indicating greater degree of harm	Factors indicating lower culpability
1. Threats or abuse to assessor or other staff	1. Offender turns up but at wrong place or time or fails to remain for duration of appointment 2. Subsequent voluntary contact to rearrange appointment

### Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

### Consider a reduction for a guilty plea

### Consider ancillary orders

Refer to pages 168-174 for guidance on available ancillary orders

### Decide sentence

#### Give reasons



# Drugs – class A – fail/refuse to provide a sample

Triable only summarily:  
Maximum: Level 4 fine and/or 3 months

**Offence seriousness (culpability and harm)**  
**A. Identify the appropriate starting point**  
Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Refusal to provide sample without good cause when required by police officer	Medium level community order	Band C fine to high level community order

**Offence seriousness (culpability and harm)**  
**B. Consider the effect of aggravating and mitigating factors (other than those within examples above)**  
Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

<p><b>Factor indicating greater degree of harm</b></p> <ol style="list-style-type: none"> <li>Threats or abuse to staff</li> </ol>	<p><b>Factors indicating lower culpability</b></p> <ol style="list-style-type: none"> <li>Subsequent voluntary contact with drug workers</li> <li>Subsequent compliance with testing on arrest/charge</li> </ol>
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**Form a preliminary view of the appropriate sentence, then consider offender mitigation**  
Common factors are identified in the pullout card

**Consider a reduction for a guilty plea**

**Consider ancillary orders**  
Refer to pages 168-174 for guidance on available ancillary orders

**Decide sentence**  
**Give reasons**

## Drunk and disorderly in a public place

Triable only summarily:  
Maximum: Level 3 fine

### Offence seriousness (culpability and harm)

#### A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Shouting, causing disturbance for some minutes	Band A fine	Conditional discharge to band B fine
Substantial disturbance caused	Band B fine	Band A fine to band C fine

### Offence seriousness (culpability and harm)

#### B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

<p><b>Factors indicating higher culpability</b></p> <ol style="list-style-type: none"> <li>1. Offensive words or behaviour involved</li> <li>2. Lengthy incident</li> <li>3. Group action</li> </ol> <p><b>Factors indicating greater degree of harm</b></p> <ol style="list-style-type: none"> <li>1. Offence committed at school, hospital or other place where vulnerable persons may be present</li> <li>2. Offence committed on public transport</li> <li>3. Victim providing public service</li> </ol>	<p><b>Factors indicating lower culpability</b></p> <ol style="list-style-type: none"> <li>1. Minor and non-threatening</li> <li>2. Stopped as soon as police arrived</li> </ol>
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### Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

### Consider a reduction for a guilty plea

### Consider ancillary orders, including compensation and football banning order (where appropriate)

Refer to pages 168-174 for guidance on available ancillary orders

### Decide sentence Give reasons

## Firearm, carrying in public place

Triable either way (but triable only summarily if the firearm is an air weapon):

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: 7 years (12 months for imitation firearms)

### Offence seriousness (culpability and harm)

#### A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Carrying an unloaded air weapon	Low level community order	Band B fine to medium level community order
Carrying loaded air weapon/imitation firearm/unloaded shot gun without ammunition	High level community order	Medium level community order to 26 weeks custody (air weapon) Medium level community order to Crown Court (imitation firearm, unloaded shot gun)
Carrying loaded shot gun/carrying shot gun or any other firearm together with ammunition for it	Crown Court	Crown Court

### Offence seriousness (culpability and harm)

#### B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

<p><b>Factors indicating higher culpability</b></p> <ol style="list-style-type: none"> <li>1. Brandishing the firearm</li> <li>2. Carrying firearm in a busy place</li> <li>3. Planned illegal use</li> </ol> <p><b>Factors indicating greater degree of harm</b></p> <ol style="list-style-type: none"> <li>1. Person or people put in fear</li> <li>2. Offender participating in violent incident</li> </ol>	<p><b>Factors indicating lower culpability</b></p> <ol style="list-style-type: none"> <li>1. Firearm not in sight</li> <li>2. No intention to use firearm</li> <li>3. Firearm to be used for lawful purpose (not amounting to a defence)</li> </ol>
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#### Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

#### Consider a reduction for a guilty plea

#### Consider ancillary orders, including compensation, forfeiture or suspension of personal liquor licence and football banning order (where appropriate)

Refer to pages 168-174 for guidance on available ancillary orders

#### Decide sentence Give reasons

## Football related offences

Sporting Events (Control of Alcohol etc.) Act 1985: s.2(1) (possession of alcohol whilst entering or trying to enter ground); s.2(2) (being drunk in, or whilst trying to enter, ground)  
 Football Offences Act 1991: s.2 (throwing missile); s.3 (indecent or racist chanting); s.4 (going onto prohibited areas)  
 Criminal Justice and Public Order Act 1994: s.166 (unauthorised sale or attempted sale of tickets)

Triable only summarily:

Maximum: Level 2 fine (being drunk in ground)

Level 3 fine (throwing missile; indecent or racist chanting; going onto prohibited areas)

Level 5 fine (unauthorised sale of tickets)

Level 3 fine and/or 3 months (possession of alcohol)

### Offence seriousness (culpability and harm)

#### A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Being drunk in, or whilst trying to enter, ground	Band A fine	Conditional discharge to band B fine
Going onto playing or other prohibited area; Unauthorised sale or attempted sale of tickets	Band B fine	Band A fine to band C fine
Throwing missile; Indecent or racist chanting	Band C fine	Band C fine
Possession of alcohol whilst entering or trying to enter ground	Band C fine	Band B fine to high level community order

### Offence seriousness (culpability and harm)

#### B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

##### Factors indicating higher culpability

1. Commercial ticket operation; potential high cash value; counterfeit tickets
2. Inciting others to misbehave
3. Possession of large quantity of alcohol
4. Offensive language or behaviour (where not an element of the offence)

##### Factors indicating greater degree of harm

1. Missile likely to cause serious injury e.g. coin, glass, bottle, stone

### Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

### Consider a reduction for a guilty plea

### Consider ancillary orders, including compensation and football banning order

Refer to pages 168-174 for guidance on available ancillary orders

### Decide sentence Give reasons

## Harassment – putting people in fear of violence

Protection from Harassment Act 1997, s.4

## Racially or religiously aggravated harassment – putting people in fear of violence

Crime and Disorder Act 1998, s.32

**Harassment:** triable either way

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: 5 years

**Racially or religiously aggravated harassment:** triable either way

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: 7 years

Where offence committed in domestic context, refer to page 177 for guidance

### Offence seriousness (culpability and harm)

#### A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
A pattern of two or more incidents of unwanted contact	6 weeks custody	High level community order to 18 weeks custody
Deliberate threats, persistent action over a longer period; or Intention to cause fear of violence	18 weeks custody	12 weeks custody to Crown Court
Sexual threats, vulnerable person targeted	Crown Court	Crown Court

### Offence seriousness (culpability and harm)

#### B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

Factors indicating higher culpability	Factors indicating lower culpability
<ol style="list-style-type: none"> <li>1. Planning</li> <li>2. Offender ignores obvious distress</li> <li>3. Visits in person to victim's home or workplace</li> <li>4. Offender involves others</li> <li>5. Using contact arrangements with a child to instigate offence</li> </ol>	<ol style="list-style-type: none"> <li>1. Limited understanding of effect on victim</li> <li>2. Initial provocation</li> </ol>
<p><b>Factors indicating greater degree of harm</b></p> <ol style="list-style-type: none"> <li>1. Victim needs medical help/counselling</li> <li>2. Physical violence used</li> <li>3. Victim aware that offender has history of using violence</li> <li>4. Grossly violent or offensive material sent</li> <li>5. Children frightened</li> <li>6. Evidence that victim changed lifestyle to avoid contact</li> </ol>	

**Form a preliminary view of the appropriate sentence  
If offender charged and convicted of the racially or religiously  
aggravated offence, increase the sentence to reflect this element**

Refer to pages 178-179 for guidance

**Consider offender mitigation**

Common factors are identified in the pullout card

**Consider a reduction for a guilty plea**

**Consider making a restraining order**

**Consider ancillary orders, including compensation**

Refer to pages 168-174 for guidance on available ancillary orders

**Decide sentence**

**Give reasons**

# Harassment (without violence) Racially or religiously aggravated harassment (non violent)

Protection from Harassment Act 1997, s.2

Crime and Disorder Act 1998, s.32

**Harassment:** triable only summarily  
Maximum: Level 5 fine and/or 6 months

**Racially or religiously aggravated harassment:** triable either way  
Maximum when tried summarily: Level 5 fine and/or 6 months Maximum when tried on indictment: 2 years

Where offence committed in domestic context, refer to page 177 for guidance

## Offence seriousness (culpability and harm)

### A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Small number of incidents	Medium level community order	Band C fine to high level community order
Constant contact at night, trying to come into workplace or home, involving others	6 weeks custody	Medium level community order to 12 weeks custody
Threatening violence, taking personal photographs, sending offensive material	18 weeks custody	12 to 26 weeks custody

## Offence seriousness (culpability and harm)

### B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

Factors indicating higher culpability	Factors indicating lower culpability
<ol style="list-style-type: none"> <li>1. Planning</li> <li>2. Offender ignores obvious distress</li> <li>3. Offender involves others</li> <li>4. Using contact arrangements with a child to instigate offence</li> </ol>	<ol style="list-style-type: none"> <li>1. Limited understanding of effect on victim</li> <li>2. Initial provocation</li> </ol>
Factors indicating greater degree of harm	
<ol style="list-style-type: none"> <li>1. Victim needs medical help/counselling</li> <li>2. Action over long period</li> <li>3. Children frightened</li> <li>4. Use or distribution of photographs</li> </ol>	

## Form a preliminary view of the appropriate sentence

**If offender charged and convicted of the racially or religiously aggravated offence, increase the sentence to reflect this element**

Refer to pages 178-179 for guidance

## Consider offender mitigation

Common factors are identified in the pullout card

## Consider a reduction for a guilty plea

## Consider making a restraining order

**Consider ancillary orders, including compensation**

Refer to pages 168-174 for guidance on available ancillary orders

## Decide sentence

**Give reasons**

## Identity documents – possess false/another’s/improperly obtained

Triable either way:  
 Maximum when tried summarily: Level 5 fine and/or 6 months  
 Maximum when tried on indictment: 2 years (s.25(5))

**Note: possession of a false identity document with the intention of using it is an indictable-only offence (Identity Cards Act 2006, s.25(1)). The maximum penalty is 10 years imprisonment.**

<b>Offence seriousness (culpability and harm)</b>		
<b>A. Identify the appropriate starting point</b>		
Starting points based on first time offender pleading not guilty		
Examples of nature of activity	Starting point	Range
Single document possessed	Medium level community order	Band C fine to high level community order
Small number of documents, no evidence of dealing	12 weeks custody	6 weeks custody to Crown Court
Considerable number of documents possessed, evidence of involvement in larger operation	Crown Court	Crown Court

<b>Offence seriousness (culpability and harm)</b>	
<b>B. Consider the effect of aggravating and mitigating factors (other than those within examples above)</b>	
Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but <b>these lists are not exhaustive</b>	
<p><b>Factors indicating higher culpability</b></p> <ol style="list-style-type: none"> <li>1. Clear knowledge that documents false</li> <li>2. Number of documents possessed (where not in offence descriptions above)</li> </ol> <p><b>Factors indicating greater degree of harm</b></p> <ol style="list-style-type: none"> <li>1. Group activity</li> <li>2. Potential impact of use (where not in offence descriptions above)</li> </ol>	<p><b>Factor indicating lower culpability</b></p> <ol style="list-style-type: none"> <li>1. Genuine mistake or ignorance</li> </ol>

**Form a preliminary view of the appropriate sentence, then consider offender mitigation**  
 Common factors are identified in the pullout card

**Consider a reduction for a guilty plea**

**Decide sentence  
Give reasons**



# Obstruct/resist a police constable in execution of duty

Police Act 1996, s.89(2)

Triable only summarily:  
Maximum: Level 3 fine and/or one month

## Offence seriousness (culpability and harm)

### A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Failure to move when required to do so	Band A fine	Conditional discharge to band B fine
Attempt to prevent arrest or other lawful police action; or giving false details	Band B fine	Band A fine to band C fine
Several people attempting to prevent arrest or other lawful police action	Low level community order	Band C fine to medium level community order

## Offence seriousness (culpability and harm)

### B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

Factors indicating higher culpability	Factors indicating lower culpability
<ol style="list-style-type: none"><li>1. Premeditated action</li><li>2. Aggressive words/threats</li><li>3. Aggressive group action</li></ol>	<ol style="list-style-type: none"><li>1. Genuine mistake or misjudgement</li><li>2. Brief incident</li></ol>

## Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

## Consider a reduction for a guilty plea

## Consider ancillary orders

Refer to pages 168-174 for guidance on available ancillary orders

## Decide sentence Give reasons

## Protective order, breach of – factors to take into consideration

This guideline and accompanying notes are taken from the Sentencing Guidelines Council's definitive guideline *Breach of a Protective Order*, published 7 December 2006

### Aims of sentencing

- (a) The main aim of sentencing for breach of a protective order (which would have been imposed to protect a victim from future harm) should be to achieve future compliance with that order.
- (b) The court will need to assess the level of risk posed by the offender. Willingness to undergo treatment or accept help may influence sentence.

### Key factors

- (i) The nature of the conduct that caused the breach of the order. In particular, whether the contact was direct or indirect, although it is important to recognise that indirect contact is capable of causing significant harm or anxiety.
- (ii) **There may be exceptional cases where the nature of the breach is particularly serious but has not been dealt with by a separate offence being charged. In these cases the risk posed by the offender and the nature of the breach will be particularly significant in determining the response.**
- (iii) The nature of the original conduct or offence is relevant in so far as it allows a judgement to be made on the level of harm caused to the victim by the breach, and the extent to which that harm was intended.
- (iv) The sentence following a breach is for the breach alone and must avoid punishing the offender again for the offence or conduct as a result of which the order was made.
- (v) It is likely that all breaches of protective orders will pass the threshold for a community sentence. Custody is the starting point where violence is used. Non-violent conduct may also cross the custody threshold where a high degree of harm or anxiety has been caused.
- (vi) Where an order was made in civil proceedings, its purpose may have been to cause the subject of the order to modify behaviour rather than to imply that the conduct was especially serious. If so, it is likely to be disproportionate to impose a custodial sentence if the breach of the order did not involve threats or violence.
- (vii) In some cases where a breach might result in a short custodial sentence but the court is satisfied that the offender genuinely intends to reform his or her behaviour and there is a real prospect of rehabilitation, the court may consider it appropriate to impose a sentence that will allow this. This may mean imposing a suspended sentence order or a community order (where appropriate with a requirement to attend an accredited domestic violence programme).

## Protective order, breach of

Triable either way:

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: 5 years

**Where the conduct is particularly serious, it would normally be charged as a separate offence. These starting points are based on the premise that the activity has either been prosecuted separately as an offence or is not of a character sufficient to justify prosecution of it as an offence in its own right.**

**Where offence committed in domestic context, refer to page 177 for guidance**

### Offence seriousness (culpability and harm)

#### A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Single breach involving no/minimal direct contact	Low level community order	Band C fine to medium level community order
More than one breach involving no/minimal contact or some direct contact	Medium level community order	Low level community order to high level community order
Single breach involving some violence and/or significant physical or psychological harm to the victim	18 weeks custody	13 to 26 weeks custody
More than one breach involving some violence and/or significant physical or psychological harm to the victim	Crown Court	26 weeks custody to Crown Court
Breach (whether one or more) involving significant physical violence and significant physical or psychological harm to the victim	Crown Court	Crown Court

### Offence seriousness (culpability and harm)

#### B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

<p><b>Factors indicating higher culpability</b></p> <ol style="list-style-type: none"> <li>1. Proven history of violence or threats by the offender</li> <li>2. Using contact arrangements with a child to instigate offence</li> <li>3. Offence is a further breach, following earlier breach proceedings</li> <li>4. Offender has history of disobedience to court orders</li> <li>5. Breach committed immediately or shortly after order made</li> </ol> <p><b>Factors indicating greater degree of harm</b></p> <ol style="list-style-type: none"> <li>1. Victim is particularly vulnerable</li> <li>2. Impact on children</li> <li>3. Victim is forced to leave home</li> </ol>	<p><b>Factors indicating lower culpability</b></p> <ol style="list-style-type: none"> <li>1. Breach occurred after long period of compliance</li> <li>2. Victim initiated contact</li> </ol>
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### Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

### Consider a reduction for a guilty plea

### Consider ancillary orders

Refer to pages 168-174 for guidance on available ancillary orders

### Decide sentence Give reasons

## Public Order Act, s.2 – violent disorder

Public Order Act 1986, s.2

Triable either way:

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: 5 years

### **Offence seriousness (culpability and harm)**

#### **A. Identify the appropriate starting point**

Starting points based on first time offender pleading not guilty

**These offences should normally be dealt with in the Crown Court.** However, there may be rare cases involving minor violence or threats of violence leading to no or minor injury, with few people involved and no weapon or missiles, in which a custodial sentence within the jurisdiction of a magistrates' court may be appropriate.

Triable either way:

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: 3 years

### Offence seriousness (culpability and harm)

#### A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Brief offence involving low-level violence, no substantial fear created	Low level community order	Band C fine to medium level community order
Degree of fighting or violence that causes substantial fear	High level community order	Medium level community order to 12 weeks custody
Fight involving a weapon/throwing objects, or conduct causing risk of serious injury	18 weeks custody	12 weeks custody to Crown Court

### Offence seriousness (culpability and harm)

#### B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

<p><b>Factors indicating higher culpability</b></p> <ol style="list-style-type: none"> <li>Group action</li> <li>Threats</li> <li>Lengthy incident</li> </ol> <p><b>Factors indicating greater degree of harm</b></p> <ol style="list-style-type: none"> <li>Vulnerable person(s) present</li> <li>Injuries caused</li> <li>Damage to property</li> </ol>	<p><b>Factors indicating lower culpability</b></p> <ol style="list-style-type: none"> <li>Did not start the trouble</li> <li>Provocation</li> <li>Stopped as soon as police arrived</li> </ol>
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#### Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

#### Consider a reduction for a guilty plea

#### Consider ancillary orders, including compensation and football banning order (where appropriate)

Refer to pages 168-174 for guidance on available ancillary orders

#### Decide sentence Give reasons

**Public Order Act, s.4 –  
threatening behaviour – fear or  
provocation of violence  
Racially or religiously aggravated  
threatening behaviour**

Public Order Act 1986, s.4

Crime and Disorder Act 1998, s.31

**Threatening behaviour:** triable only summarily  
Maximum: Level 5 fine and/or 6 months

**Racially or religiously aggravated threatening behaviour:** triable either way  
Maximum when tried summarily: Level 5 fine and/or 6 months  
Maximum when tried on indictment: 2 years

Where offence committed in domestic context, refer to page 177 for guidance

**Offence seriousness (culpability and harm)**

**A. Identify the appropriate starting point**

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Fear or threat of low level immediate unlawful violence such as push, shove or spit	Low level community order	Band B fine to medium level community order
Fear or threat of medium level immediate unlawful violence such as punch	High level community order	Low level community order to 12 weeks custody
Fear or threat of high level immediate unlawful violence such as use of weapon; missile thrown; gang involvement	12 weeks custody	6 to 26 weeks custody

**Offence seriousness (culpability and harm)**

**B. Consider the effect of aggravating and mitigating factors  
(other than those within examples above)**

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

<p><b>Factors indicating higher culpability</b></p> <ol style="list-style-type: none"> <li>1. Planning</li> <li>2. Offender deliberately isolates victim</li> <li>3. Group action</li> <li>4. Threat directed at victim because of job</li> <li>5. History of antagonism towards victim</li> </ol> <p><b>Factors indicating greater degree of harm</b></p> <ol style="list-style-type: none"> <li>1. Offence committed at school, hospital or other place where vulnerable persons may be present</li> <li>2. Offence committed on enclosed premises such as public transport</li> <li>3. Vulnerable victim(s)</li> <li>4. Victim needs medical help/counselling</li> </ol>	<p><b>Factors indicating lower culpability</b></p> <ol style="list-style-type: none"> <li>1. Impulsive action</li> <li>2. Short duration</li> <li>3. Provocation</li> </ol>
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**Form a preliminary view of the appropriate sentence  
If offender charged and convicted of the racially or religiously  
aggravated offence, increase the sentence to reflect this element**

Refer to pages 178-179 for guidance

**Consider offender mitigation**

Common factors are identified in the pullout card

**Consider a reduction for a guilty plea**

**Consider ancillary orders, including compensation and  
football banning order (where appropriate)**

Refer to pages 168-174 for guidance on available ancillary orders

**Decide sentence  
Give reasons**

**Public Order Act, s.4A –  
disorderly behaviour with  
intent to cause harassment,  
alarm or distress**

**Racially or religiously  
aggravated disorderly  
behaviour with intent to cause  
harassment, alarm or distress**

**Disorderly behaviour with intent to cause harassment, alarm or distress:** triable only summarily

Maximum: Level 5 fine and/or 6 months

**Racially or religiously aggravated disorderly behaviour with intent to cause harassment etc.:** triable either way

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: 2 years

**Offence seriousness (culpability and harm)**

**A. Identify the appropriate starting point**

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Threats, abuse or insults made more than once but on same occasion against the same person e.g. while following down the street	Band C fine	Band B fine to low level community order
Group action or deliberately planned action against targeted victim	Medium level community order	Low level community order to 12 weeks custody
Weapon brandished or used or threats against vulnerable victim – course of conduct over longer period	12 weeks custody	High level community order to 26 weeks custody

**Offence seriousness (culpability and harm)**

**B. Consider the effect of aggravating and mitigating factors (other than those within examples above)**

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

<p><b>Factors indicating higher culpability</b></p> <ol style="list-style-type: none"> <li>1. High degree of planning</li> <li>2. Offender deliberately isolates victim</li> </ol> <p><b>Factors indicating greater degree of harm</b></p> <ol style="list-style-type: none"> <li>1. Offence committed in vicinity of victim's home</li> <li>2. Large number of people in vicinity</li> <li>3. Actual or potential escalation into violence</li> <li>4. Particularly serious impact on victim</li> </ol>	<p><b>Factors indicating lower culpability</b></p> <ol style="list-style-type: none"> <li>1. Very short period</li> <li>2. Provocation</li> </ol>
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**Form a preliminary view of the appropriate sentence**

**If offender charged and convicted of the racially or religiously aggravated offence, increase the sentence to reflect this element**

Refer to pages 178-179 for guidance

**Consider offender mitigation**

Common factors are identified in the pullout card

**Consider a reduction for a guilty plea**

**Consider ancillary orders, including compensation and football banning order (where appropriate)**

Refer to pages 168-174 for guidance on available ancillary orders

**Decide sentence**

**Give reasons**

**Public Order Act, s.5  
– disorderly behaviour  
(harassment, alarm or distress)  
Racially or religiously  
aggravated disorderly  
behaviour**

Public Order Act 1986, s.5

Crime and Disorder Act 1998, s.31

**Disorderly behaviour:** triable only summarily  
Maximum: Level 3 fine

**Racially or religiously aggravated disorderly behaviour:** triable only summarily  
Maximum: Level 4 fine

**Offence seriousness (culpability and harm)**

**A. Identify the appropriate starting point**

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Shouting, causing disturbance for some minutes	Band A fine	Conditional discharge to band B fine
Substantial disturbance caused	Band B fine	Band A fine to band C fine

**Offence seriousness (culpability and harm)**

**B. Consider the effect of aggravating and mitigating factors  
(other than those within examples above)**

Common aggravating and mitigating factors are identified in the pullout card –  
the following may be particularly relevant but **these lists are not exhaustive**

<p><b>Factors indicating higher culpability</b></p> <ol style="list-style-type: none"> <li>Group action</li> <li>Lengthy incident</li> </ol> <p><b>Factors indicating greater degree of harm</b></p> <ol style="list-style-type: none"> <li>Vulnerable person(s) present</li> <li>Offence committed at school, hospital or other place where vulnerable persons may be present</li> <li>Victim providing public service</li> </ol>	<p><b>Factors indicating lower culpability</b></p> <ol style="list-style-type: none"> <li>Stopped as soon as police arrived</li> <li>Brief/minor incident</li> <li>Provocation</li> </ol>
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**Form a preliminary view of the appropriate sentence  
If offender charged and convicted of the racially or religiously  
aggravated offence, increase the sentence to reflect this element**

Refer to pages 178-179 for guidance

**Consider offender mitigation**

Common factors are identified in the pullout card

**Consider a reduction for a guilty plea**

**Consider ancillary orders, including compensation and  
football banning order (where appropriate)**

Refer to pages 168-174 for guidance on available ancillary orders

**Decide sentence  
Give reasons**



## Railway fare evasion

Triable only summarily:

Maximum: Level 3 fine or 3 months (s.5(3)); level 2 fine (s.5(1))

### Offence seriousness (culpability and harm)

#### A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Failing to produce ticket or pay fare on request	Band A fine	Conditional discharge to band B fine
Travelling on railway without having paid the fare or knowingly and wilfully travelling beyond the distance paid for, with intent to avoid payment	Band B fine	Band A fine to band C fine

### Offence seriousness (culpability and harm)

#### B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

##### Factor indicating higher culpability

1. Offensive or intimidating language or behaviour towards railway staff

##### Factor indicating greater degree of harm

1. High level of loss caused or intended to be caused

### Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

### Consider a reduction for a guilty plea

### Consider ancillary orders, including compensation

Refer to pages 168-174 for guidance on available ancillary orders

### Decide sentence

#### Give reasons

## School non-attendance

Education Act 1996, s.444(1) (parent fails to secure regular attendance at school of registered pupil); s.444(1A) (parent knowingly fails to secure regular attendance at school of registered pupil)

Triable only summarily

Maximum: Level 3 fine (s.444(1)); level 4 fine and/or 3 months (s.444(1A))

### Offence seriousness (culpability and harm)

#### A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Short period following previous good attendance (s.444(1))	Band A fine	Conditional discharge to band A fine
Erratic attendance for long period (s.444(1))	Band B fine	Band B fine to Band C fine
Colluding in and condoning non-attendance or deliberately instigating non-attendance (s.444(1A))	Medium level community order	Low level community order to high level community order

### Offence seriousness (culpability and harm)

#### B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

<p><b>Factors indicating higher culpability</b></p> <ol style="list-style-type: none"> <li>1. Parental collusion (s.444(1) only)</li> <li>2. Lack of parental effort to ensure attendance (s.444(1) only)</li> <li>3. Threats to teachers and/or officials</li> <li>4. Refusal to co-operate with school and/or officials</li> </ol> <p><b>Factors indicating greater degree of harm</b></p> <ol style="list-style-type: none"> <li>1. More than one child</li> <li>2. Harmful effect on other children in family</li> </ol>	<p><b>Factors indicating lower culpability</b></p> <ol style="list-style-type: none"> <li>1. Parent unaware of child's whereabouts</li> <li>2. Parent tried to ensure attendance</li> <li>3. Parent concerned by child's allegations of bullying/unable to get school to address bullying</li> </ol>
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### Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

### Consider a reduction for a guilty plea

### Consider ancillary orders, including parenting order

Refer to pages 168-174 for guidance on available ancillary orders

### Decide sentence Give reasons

## Sex offenders register – fail to comply with notification requirements

Triable either way:

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: 5 years

<p><b>Offence seriousness (culpability and harm)</b>  <b>A. Identify the appropriate starting point</b>                      Starting points based on first time offender (see note below) pleading not guilty</p>		
Examples of nature of activity	Starting point	Range
Negligent or inadvertent failure to comply with requirements	Medium level community order	Band C fine to high level community order
Deliberate failure to comply with requirements OR Supply of information known to be false	6 weeks custody	High level community order to 26 weeks custody
Conduct as described in box above AND Long period of non-compliance OR Attempts to avoid detection	18 weeks custody	6 weeks custody to Crown Court
<p><b>Offence seriousness (culpability and harm)</b>  <b>B. Consider the effect of aggravating and mitigating factors (other than those within examples above)</b>                      Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but <b>these lists are not exhaustive</b></p>		
<p><b>Factor indicating higher culpability</b>                      1. Long period of non-compliance (where not in the examples above)</p> <p><b>Factor indicating greater degree of harm</b>                      1. Alarm or distress caused to victim                      2. Particularly serious original offence</p>	<p><b>Factor indicating lower culpability</b>                      1. Genuine misunderstanding</p>	
<p><b>Form a preliminary view of the appropriate sentence, then consider offender mitigation</b>                      Common factors are identified in the pullout card</p>		
<p><b>Consider a reduction for a guilty plea</b></p>		
<p><b>Consider ancillary orders</b>                      Refer to pages 168-174 for guidance on available ancillary orders</p>		
<p><b>Decide sentence</b>  <b>Give reasons</b></p>		

**Note**

An offender convicted of this offence will always have at least one relevant previous conviction for the offence that resulted in the notification requirements being imposed. The starting points and ranges take this into account; any other previous convictions should be considered in the usual way – see pages 17 and 145.

# Sexual activity in a public lavatory

Sexual Offences Act 2003, s.71

Triable only summarily

Maximum: Level 5 fine and/or 6 months

**This guideline and accompanying notes are taken from the Sentencing Guidelines Council's definitive guideline *Sexual Offences Act 2003*, published 30 April 2007**

## Key factors

- (a) This offence is committed where an offender intentionally engages in sexual activity in a public lavatory. It was introduced to give adults and children the freedom to use public lavatories for the purpose for which they are designed, without the fear of being an unwilling witness to overtly sexual behaviour of a kind that most people would not expect to be conducted in public. It is primarily a public order offence rather than a sexual offence.
- (b) When dealing with a repeat offender, the starting point should be a low level community order with a range of Band C fine to medium level community order. The presence of aggravating factors may suggest that a sentence above the range is appropriate.
- (c) This guideline may be relevant by way of analogy to conduct charged as the common law offence of outraging public decency; the offence is triable either way and has a maximum penalty of a level 5 fine and/or 6 months imprisonment when tried summarily.

### Offence seriousness (culpability and harm)

#### A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Basic offence as defined in the Act, assuming no aggravating or mitigating factors	Band C fine	Band C fine
Offence with aggravating factors	Low level community order	Band C fine to medium level community order

### Offence seriousness (culpability and harm)

#### B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

<b>Factors indicating higher culpability</b> 1. Intimidating behaviour/threats of violence to member(s) of the public 2. Blatant behaviour	
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#### Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

#### Consider a reduction for a guilty plea

#### Consider ancillary orders, including compensation

Refer to pages 168-174 for guidance on available ancillary orders

#### Decide sentence Give reasons

## Taxi touting/soliciting for hire

Criminal Justice and Public Order Act 1994,  
s.167

Triable only summarily:  
Maximum: Level 4 fine

### Offence seriousness (culpability and harm)

#### A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Licensed taxi-driver touting for trade (i.e. making approach rather than waiting for a person to initiate hiring)	Band A fine	Conditional discharge to band A fine and consider disqualification 1-3 months
PHV licence held but touting for trade rather than being booked through an operator; an accomplice to touting	Band B fine	Band A fine to band C fine and consider disqualification 3-6 months
No PHV licence held	Band C fine	Band B fine to Band C fine and disqualification 6-12 months

**Note:** refer to page 150 for approach to fines for offences committed for commercial purposes

### Offence seriousness (culpability and harm)

#### B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

Factors indicating higher culpability	Factor indicating lower culpability
<ol style="list-style-type: none"><li>1. Commercial business/large scale operation</li><li>2. No insurance/invalid insurance</li><li>3. No driving licence and/or no MOT</li><li>4. Vehicle not roadworthy</li></ol>	<ol style="list-style-type: none"><li>1. Providing a service when no licensed taxi available</li></ol>
<b>Factors indicating greater degree of harm</b> <ol style="list-style-type: none"><li>1. Deliberately diverting trade from taxi rank</li><li>2. PHV licence had been refused/offender ineligible for licence</li></ol>	

#### Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

#### Consider a reduction for a guilty plea

#### Consider ancillary orders

Refer to pages 168-174 for guidance on available ancillary orders

#### Consider disqualification from driving and deprivation of property

#### Decide sentence Give reasons

Triable either way:

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: 10 years

Where offence committed in domestic context, refer to page 177 for guidance

## Identify dangerous offenders

This is a serious offence for the purposes of the public protection provisions in the Criminal Justice Act 2003 – refer to page 187 and consult legal adviser for guidance

## Offence seriousness (culpability and harm)

### A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
One threat uttered in the heat of the moment, no more than fleeting impact on victim	Medium level community order	Low level community order to high level community order
Single calculated threat or victim fears that threat will be carried out	12 weeks custody	6 to 26 weeks custody
Repeated threats or visible weapon	Crown Court	Crown Court

## Offence seriousness (culpability and harm)

### B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

<p><b>Factors indicating higher culpability</b></p> <ol style="list-style-type: none"> <li>1. Planning</li> <li>2. Offender deliberately isolates victim</li> <li>3. Group action</li> <li>4. Threat directed at victim because of job</li> <li>5. History of antagonism towards victim</li> </ol> <p><b>Factors indicating greater degree of harm</b></p> <ol style="list-style-type: none"> <li>1. Vulnerable victim</li> <li>2. Victim needs medical help/counselling</li> </ol>	<p><b>Factor indicating lower culpability</b></p> <ol style="list-style-type: none"> <li>1. Provocation</li> </ol>
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## Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

## Consider a reduction for a guilty plea

## Consider ancillary orders, including compensation and football banning order (where appropriate)

Refer to pages 168-174 for guidance on available ancillary orders

## Decide sentence Give reasons

## Trade mark, unauthorised use of etc.

Triable either way:

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: 10 years

### Offence seriousness (culpability and harm)

#### A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Small number of counterfeit items	Band C fine	Band B fine to low level community order
Larger number of counterfeit items but no involvement in wider operation	Medium level community order, plus fine*	Low level community order to 12 weeks custody, plus fine*
High number of counterfeit items or involvement in wider operation e.g. manufacture or distribution	12 weeks custody	6 weeks custody to Crown Court
Central role in large-scale operation	Crown Court	Crown Court

\* This may be an offence for which it is appropriate to combine a fine with a community order. Consult your legal adviser for further guidance.

### Offence seriousness (culpability and harm)

#### B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

<p><b>Factors indicating higher culpability</b></p> <ol style="list-style-type: none"> <li>1. High degree of professionalism</li> <li>2. High level of profit</li> </ol> <p><b>Factor indicating greater degree of harm</b></p> <ol style="list-style-type: none"> <li>1. Purchasers at risk of harm e.g. from counterfeit drugs</li> </ol>	<p><b>Factor indicating lower culpability</b></p> <ol style="list-style-type: none"> <li>1. Mistake or ignorance about provenance of goods</li> </ol>
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#### Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

#### Consider a reduction for a guilty plea

#### Consider ancillary orders

Refer to pages 168-174 for guidance on available ancillary orders

#### Consider ordering forfeiture and destruction of the goods

#### Decide sentence Give reasons

Triable only summarily:  
Maximum: Level 3 fine

## Offence seriousness (culpability and harm)

### A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Up to 6 months unlicensed use	Band A fine	Band A fine
Over 6 months unlicensed use	Band B Fine	Band A fine to band B fine

## Offence seriousness (culpability and harm)

### B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

#### Factors indicating lower culpability

1. Accidental oversight or belief licence held
2. Confusion of responsibility
3. Licence immediately obtained

### Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

### Consider a reduction for a guilty plea

### Consider ancillary orders

Refer to pages 168-174 for guidance on available ancillary orders

### Decide sentence

### Give reasons



Triable only summarily:

Maximum: Level 4 fine and/or 3 months

## Offence seriousness (culpability and harm)

### A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Trying door handles; no entry gained to vehicle; no damage caused	Band C fine	Band A fine to low level community order
Entering vehicle, little or no damage caused	Medium level community order	Band C fine to high level community order
Entering vehicle, with damage caused	High level community order	Medium level community order to 12 weeks custody

## Offence seriousness (culpability and harm)

### B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

#### Factor indicating higher culpability

1. Targeting vehicle in dark/isolated location

#### Factors indicating greater degree of harm

1. Emergency services vehicle
2. Disabled driver's vehicle
3. Part of series

## Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

## Consider a reduction for a guilty plea

## Consider ancillary orders, including compensation

Refer to pages 168-174 for guidance on available ancillary orders

## Consider disqualification from driving

## Decide sentence

### Give reasons

## Vehicle licence/registration fraud

Triable either way:

Maximum when tried summarily: Level 5 fine

Maximum when tried on indictment: 2 years

### Offence seriousness (culpability and harm)

#### A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Use of unaltered licence from another vehicle	Band B fine	Band B fine
Forged licence bought for own use, or forged/ altered for own use	Band C fine	Band C fine
Use of number plates from another vehicle; or Licence/number plates forged or altered for sale to another	High level community order (in Crown Court)	Medium level community order to Crown Court  (Note: community order and custody available only in Crown Court)

### Offence seriousness (culpability and harm)

#### B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

<p><b>Factors indicating higher culpability</b></p> <ol style="list-style-type: none"> <li>1. LGV, PSV, taxi etc.</li> <li>2. Long-term fraudulent use</li> </ol> <p><b>Factors indicating greater degree of harm</b></p> <ol style="list-style-type: none"> <li>1. High financial gain</li> <li>2. Innocent victim deceived</li> <li>3. Legitimate owner inconvenienced</li> </ol>	<p><b>Factors indicating lower culpability</b></p> <ol style="list-style-type: none"> <li>1. Licence/registration mark from another vehicle owned by defendant</li> <li>2. Short-term use</li> </ol>
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#### Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

#### Consider a reduction for a guilty plea

#### Consider ancillary orders

Refer to pages 168-174 for guidance on available ancillary orders

#### Consider disqualification from driving and deprivation of property (including vehicle)

#### Decide sentence

#### Give reasons

Triable only summarily:

Maximum: Level 5 fine and/or 6 months

May disqualify (no points available)

## Offence seriousness (culpability and harm)

### A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Exceeding authorised use of e.g. employer's or relative's vehicle; retention of hire car beyond return date	Low level community order	Band B fine to medium level community order
As above with damage caused to lock/ignition; OR Stranger's vehicle involved but no damage caused	Medium level community order	Low level community order to high level community order
Taking vehicle from private premises; OR Causing damage to e.g. lock/ignition of stranger's vehicle	High level community order	Medium level community order to 26 weeks custody

## Offence seriousness (culpability and harm)

### B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

<b>Factors indicating greater degree of harm</b> <ol style="list-style-type: none"> <li>1. Vehicle later burnt</li> <li>2. Vehicle belonging to elderly/disabled person</li> <li>3. Emergency services vehicle</li> <li>4. Medium to large goods vehicle</li> <li>5. Passengers carried</li> </ol>	<b>Factor indicating lower culpability</b> <ol style="list-style-type: none"> <li>1. Misunderstanding with owner</li> </ol> <b>Factor indicating lesser degree of harm</b> <ol style="list-style-type: none"> <li>1. Offender voluntarily returned vehicle to owner</li> </ol>
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### Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

### Consider a reduction for a guilty plea

### Consider ancillary orders, including compensation

Refer to pages 168-174 for guidance on available ancillary orders

### Consider disqualification from driving

### Decide sentence

### Give reasons

**Vehicle taking (aggravated)**  
**Damage caused to property other than the vehicle in accident or damage caused to the vehicle**

Triable either way (triable only summarily if damage under £5,000):  
 Maximum when tried summarily: Level 5 fine and/or 6 months  
 Maximum when tried on indictment: 2 years

- Must endorse and disqualify for at least 12 months
- Must disqualify for **at least** 2 years if offender has had two or more disqualifications for periods of 56 days or more in preceding 3 years – **refer to page 184 and consult your legal adviser for further guidance**

**If there is a delay in sentencing after conviction, consider interim disqualification**

<b>Offence seriousness (culpability and harm)</b>		
<b>A. Identify the appropriate starting point</b>		
Starting points based on first time offender pleading not guilty		
Examples of nature of activity	Starting point	Range
Exceeding authorised use of e.g. employer's or relative's vehicle; retention of hire car beyond return date; minor damage to taken vehicle	Medium level community order	Low level community order to high level community order
Greater damage to taken vehicle and/or moderate damage to another vehicle and/or property	High level community order	Medium level community order to 12 weeks custody
Vehicle taken as part of burglary or from private premises; severe damage	18 weeks custody	12 to 26 weeks custody (Crown Court if damage over £5,000)

<b>Offence seriousness (culpability and harm)</b>	
<b>B. Consider the effect of aggravating and mitigating factors (other than those within examples above)</b>	
Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but <b>these lists are not exhaustive</b>	
<p><b>Factors indicating higher culpability</b></p> <ol style="list-style-type: none"> <li>1. Vehicle deliberately damaged/destroyed</li> <li>2. Offender under influence of alcohol/drugs</li> </ol> <p><b>Factors indicating greater degree of harm</b></p> <ol style="list-style-type: none"> <li>1. Passenger(s) carried</li> <li>2. Vehicle belonging to elderly or disabled person</li> <li>3. Emergency services vehicle</li> <li>4. Medium to large goods vehicle</li> <li>5. Damage caused in moving traffic accident</li> </ol>	<p><b>Factors indicating lower culpability</b></p> <ol style="list-style-type: none"> <li>1. Misunderstanding with owner</li> <li>2. Damage resulting from actions of another (where this does not provide a defence)</li> </ol>

**Form a preliminary view of the appropriate sentence, then consider offender mitigation**  
 Common factors are identified in the pullout card

**Consider a reduction for a guilty plea**

**Consider ancillary orders, including compensation**  
 Refer to pages 168-174 for guidance on available ancillary orders

**Decide sentence**  
**Give reasons**

## Vehicle taking (aggravated)

Theft Act 1968, ss.12A(2)(a) and (b)

### Dangerous driving or accident causing injury

Triable either way:

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: 2 years; 14 years if accident caused death

- Must endorse and disqualify for at least 12 months
- Must disqualify for **at least** 2 years if offender has had two or more disqualifications for periods of 56 days or more in preceding 3 years – **refer to page 184 and consult your legal adviser for further guidance**

If there is a delay in sentencing after conviction, consider interim disqualification

#### Offence seriousness (culpability and harm)

##### A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Taken vehicle involved in single incident of bad driving where little or no damage or risk of personal injury	High level community order	Medium level community order to 12 weeks custody
Taken vehicle involved in incident(s) involving excessive speed or showing off, especially on busy roads or in built-up area	18 weeks custody	12 to 26 weeks custody
Taken vehicle involved in prolonged bad driving involving deliberate disregard for safety of others	Crown Court	Crown Court

#### Offence seriousness (culpability and harm)

##### B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

###### Factors indicating higher culpability

1. Disregarding warnings of others
2. Evidence of alcohol or drugs
3. Carrying out other tasks while driving
4. Carrying passengers or heavy load
5. Tiredness
6. Trying to avoid arrest
7. Aggressive driving, such as driving much too close to vehicle in front, inappropriate attempts to overtake, or cutting in after overtaking

###### Factors indicating greater degree of harm

1. Injury to others
2. Damage to other vehicles or property

#### Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

#### Consider a reduction for a guilty plea

#### Consider ordering disqualification until appropriate driving test passed Consider ancillary orders, including compensation

Refer to pages 168-174 for guidance on available ancillary orders

#### Decide sentence Give reasons

Triable either way:

Maximum when tried summarily: 6 months or level 5 fine

Maximum when tried on indictment: 5 years

Where offence committed in domestic context, refer to page 177 for guidance

## Offence seriousness (culpability and harm)

### A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Sudden outburst in chance encounter	6 weeks custody	Medium level community order to 18 weeks custody
Conduct amounting to a threat; staring at, approaching or following witnesses; talking about the case; trying to alter or stop evidence	18 weeks custody	12 weeks custody to Crown Court
Threats of violence to witnesses and/or their families; deliberately seeking out witnesses	Crown Court	Crown Court

## Offence seriousness (culpability and harm)

### B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

#### Factors indicating higher culpability

1. Breach of bail conditions
2. Offender involves others

#### Factors indicating greater degree of harm

1. Detrimental impact on administration of justice
2. Contact made at or in vicinity of victim's home

## Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

## Consider a reduction for a guilty plea

## Consider ancillary orders, including compensation

Refer to pages 168-174 for guidance on available ancillary orders

## Decide sentence Give reasons

## Careless driving (drive without due care and attention)

Triable only summarily:  
Maximum: Level 5 fine

Must endorse and may disqualify. If no disqualification, impose 3 – 9 points

<b>Offence seriousness (culpability and harm)</b> <b>A. Identify the appropriate starting point</b> Starting points based on first time offender pleading not guilty		
Examples of nature of activity	Starting point	Range
Momentary lapse of concentration or misjudgement at low speed	Band A fine	Band A fine 3 – 4 points
Loss of control due to speed, mishandling or insufficient attention to road conditions, or carelessly turning right across on-coming traffic	Band B fine	Band B fine 5 – 6 points
Overtaking manoeuvre at speed resulting in collision of vehicles, or driving bordering on the dangerous	Band C fine	Band C fine Consider disqualification OR 7 – 9 points

<b>Offence seriousness (culpability and harm)</b> <b>B. Consider the effect of aggravating and mitigating factors (other than those within examples above)</b> Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but <b>these lists are not exhaustive</b>	
<b>Factors indicating higher culpability</b> 1. Excessive speed 2. Carrying out other tasks while driving 3. Carrying passengers or heavy load 4. Tiredness  <b>Factors indicating greater degree of harm</b> 1. Injury to others 2. Damage to other vehicles or property 3. High level of traffic or pedestrians in vicinity 4. Location e.g. near school when children are likely to be present	<b>Factors indicating lower culpability</b> 1. Minor risk 2. Inexperience of driver 3. Sudden change in road or weather conditions

**Form a preliminary view of the appropriate sentence, then consider offender mitigation**  
Common factors are identified in the pullout card

**Consider a reduction for guilty plea**

**Consider ordering disqualification until appropriate driving test passed**  
**Consider ancillary orders, including compensation**  
 Refer to pages 168-174 for guidance on available ancillary orders

**Decide sentence**  
**Give reasons**

## Causing death by careless or inconsiderate driving – factors to take into consideration

This guideline and accompanying notes are taken from the Sentencing Guidelines Council's definitive guideline *Causing Death by Driving*, published 15 July 2008

### Key factors

- (a) It is unavoidable that some cases will be on the borderline between *dangerous* and *careless* driving, or may involve a number of factors that significantly increase the seriousness of an offence. As a result, the guideline for this offence identifies three levels of seriousness, the range for the highest of which overlaps with ranges for the lower levels of seriousness for *causing death by dangerous driving*.
- (b) The three levels of seriousness are defined by the degree of carelessness involved in the standard of driving:
- the most serious level for this offence is where the offender's driving fell *not that far short of dangerous*;
  - the least serious group of offences relates to those cases where the level of culpability is low – for example in a case involving an offender who misjudges the speed of another vehicle, or turns without seeing an oncoming vehicle because of restricted visibility;
  - other cases will fall into the intermediate level.
- (c) Where the level of carelessness is low and there are no aggravating factors, even the fact that death was caused is not sufficient to justify a prison sentence.
- (d) A fine is unlikely to be an appropriate sentence for this offence; where a non-custodial sentence is considered appropriate, this should be a community order. The nature of the requirements will be determined by the purpose<sup>1</sup> identified by the court as of primary importance. Requirements most likely to be relevant include unpaid work requirement, activity requirement, programme requirement and curfew requirement.
- (e) Offender mitigation particularly relevant to this offence includes conduct after the offence such as where the offender gave direct, positive, assistance at the scene of a collision to victim(s). It may also include remorse – whilst it can be expected that anyone who has caused a death by driving would be remorseful, this cannot undermine its importance for sentencing purposes. It is for the court to determine whether an expression of remorse is genuine.
- (f) Where an offender has a good driving record, this is not a factor that automatically should be treated as mitigation, especially now that the presence of previous convictions is a statutory aggravating factor. However, any evidence to show that an offender has previously been an exemplary driver, for example having driven an ambulance, police vehicle, bus, taxi or similar vehicle conscientiously and without incident for many years, is a fact that the courts may well wish to take into account by way of offender mitigation. This is likely to have even greater effect where the driver is driving on public duty (for example, on ambulance, fire services or police duties) and was responding to an emergency.
- (g) Disqualification of the offender from driving and endorsement of the offender's driving licence are mandatory, and the offence carries between 3 and 11 penalty points when the court finds special reasons for not imposing disqualification. There is a discretionary power<sup>2</sup> to order an extended driving test/re-test where a person is convicted of this offence.

<sup>1</sup> Criminal Justice Act 2003, s.142(1)

<sup>2</sup> Road Traffic Offenders Act 1988, s.36(4)



## Causing death by careless or inconsiderate driving

Triable either way:

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: 5 years

### Offence seriousness (culpability and harm)

#### A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Careless or inconsiderate driving arising from momentary inattention with no aggravating factors	Medium level community order	Low level community order to high level community order
Other cases of careless or inconsiderate driving	Crown Court	High level community order to Crown Court
Careless or inconsiderate driving falling not far short of dangerous driving	Crown Court	Crown Court

### Offence seriousness (culpability and harm)

#### B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

<p><b>Factors indicating higher culpability</b></p> <ol style="list-style-type: none"> <li>Other offences committed at the same time, such as driving other than in accordance with the terms of a valid licence; driving while disqualified; driving without insurance; taking a vehicle without consent; driving a stolen vehicle</li> <li>Previous convictions for motoring offences, particularly offences that involve bad driving</li> <li>Irresponsible behaviour, such as failing to stop or falsely claiming that one of the victims was responsible for the collision</li> </ol> <p><b>Factors indicating greater degree of harm</b></p> <ol style="list-style-type: none"> <li>More than one person was killed as a result of the offence</li> <li>Serious injury to one or more persons in addition to the death(s)</li> </ol>	<p><b>Factors indicating lower culpability</b></p> <ol style="list-style-type: none"> <li>Offender seriously injured in the collision</li> <li>The victim was a close friend or relative</li> <li>The actions of the victim or a third party contributed to the commission of the offence</li> <li>The offender's lack of driving experience contributed significantly to the likelihood of a collision occurring and/or death resulting</li> <li>The driving was in response to a proven and genuine emergency falling short of a defence</li> </ol>
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### Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

### Consider a reduction for a guilty plea

### Consider ancillary orders, including disqualification and deprivation of property

Refer to pages 168-174 for guidance on available ancillary orders

### Decide sentence Give reasons

## Causing death by driving: unlicensed, disqualified or uninsured drivers – factors to take into consideration

This guideline and accompanying notes are taken from the Sentencing Guidelines Council's definitive guideline *Causing Death by Driving*, published 15 July 2008

### Key factors

- (a) Culpability arises from the offender driving a vehicle on a road or other public place when, by law, not allowed to do so; the offence does not involve any fault in the standard of driving.
- (b) Since driving whilst disqualified is more culpable than driving whilst unlicensed or uninsured, a higher starting point is proposed when the offender was disqualified from driving at the time of the offence.
- (c) Being uninsured, unlicensed or disqualified are the only determinants of seriousness for this offence, as there are no factors relating to the standard of driving. The list of aggravating factors identified is slightly different as the emphasis is on the decision to drive by an offender who is not permitted by law to do so.
- (d) A fine is unlikely to be an appropriate sentence for this offence; where a non-custodial sentence is considered appropriate, this should be a community order.
- (e) Where the *decision to drive was brought about by a genuine and proven emergency*, that may mitigate offence seriousness and so it is included as an additional mitigating factor.
- (f) An additional mitigating factor covers those situations where an offender genuinely believed that there was valid insurance or a valid licence.
- (g) Offender mitigation particularly relevant to this offence includes conduct after the offence such as where the offender gave direct, positive, assistance at the scene of a collision to victim(s). It may also include remorse – whilst it can be expected that anyone who has caused a death by driving would be remorseful, this cannot undermine its importance for sentencing purposes. It is for the court to determine whether an expression of remorse is genuine.
- (h) Where an offender has a good driving record, this is not a factor that automatically should be treated as mitigation, especially now that the presence of previous convictions is a statutory aggravating factor. However, any evidence to show that an offender has previously been an exemplary driver, for example having driven an ambulance, police vehicle, bus, taxi or similar vehicle conscientiously and without incident for many years, is a fact that the courts may well wish to take into account by way of offender mitigation. This is likely to have even greater effect where the driver is driving on public duty (for example, on ambulance, fire services or police duties) and was responding to an emergency.
- (i) Disqualification of the offender from driving and endorsement of the offender's driving licence are mandatory, and the offence carries between 3 and 11 penalty points when the court finds special reasons for not imposing disqualification. There is a discretionary power<sup>1</sup> to order an extended driving test/re-test where a person is convicted of this offence.

<sup>1</sup> Road Traffic Offenders Act 1988, s.36(4)

## Causing death by driving: unlicensed, disqualified or uninsured drivers

Triable either way:

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: 2 years

### Offence seriousness (culpability and harm)

#### A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
The offender was unlicensed or uninsured – no aggravating factors	Medium level community order	Low level community order to high level community order
The offender was unlicensed or uninsured plus at least 1 aggravating factor from the list below	26 weeks custody	High level community order to Crown Court
The offender was disqualified from driving <b>OR</b> The offender was unlicensed or uninsured plus 2 or more aggravating factors from the list below	Crown Court	Crown Court

### Offence seriousness (culpability and harm)

#### B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

<p><b>Factors indicating higher culpability</b></p> <ol style="list-style-type: none"> <li>1. Previous convictions for motoring offences, whether involving bad driving or involving an offence of the same kind that forms part of the present conviction (i.e. unlicensed, disqualified or uninsured driving)</li> <li>2. Irresponsible behaviour such as failing to stop or falsely claiming that someone else was driving</li> </ol> <p><b>Factors indicating greater degree of harm</b></p> <ol style="list-style-type: none"> <li>1. More than one person was killed as a result of the offence</li> <li>2. Serious injury to one or more persons in addition to the death(s)</li> </ol>	<p><b>Factors indicating lower culpability</b></p> <ol style="list-style-type: none"> <li>1. The decision to drive was brought about by a proven and genuine emergency falling short of a defence</li> <li>2. The offender genuinely believed that he or she was insured or licensed to drive</li> <li>3. The offender was seriously injured as a result of the collision</li> <li>4. The victim was a close friend or relative</li> </ol>
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### Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

### Consider a reduction for a guilty plea

### Consider ancillary orders, including disqualification and deprivation of property

refer to pages 168-174 for guidance on available ancillary orders

### Decide sentence Give reasons

Triable either way:

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: 2 years

- Must endorse and disqualify for at least 12 months. Must order extended re-test
- Must disqualify for **at least** 2 years if offender has had two or more disqualifications for periods of 56 days or more in preceding 3 years – **refer to page 184 and consult your legal adviser for further guidance**

If there is a delay in sentencing after conviction, consider interim disqualification

## Offence seriousness (culpability and harm)

### A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Single incident where little or no damage or risk of personal injury	Medium level community order	Low level community order to high level community order Disqualify 12 – 15 months
Incident(s) involving excessive speed or showing off, especially on busy roads or in built-up area; OR Single incident where little or no damage or risk of personal injury but offender was disqualified driver	12 weeks custody	High level community order to 26 weeks custody Disqualify 15 – 24 months
Prolonged bad driving involving deliberate disregard for safety of others; OR Incident(s) involving excessive speed or showing off, especially on busy roads or in built-up area, by disqualified driver; OR Driving as described in box above while being pursued by police	Crown Court	Crown Court

## Offence seriousness (culpability and harm)

### B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

<p><b>Factors indicating higher culpability</b></p> <ol style="list-style-type: none"> <li>1. Disregarding warnings of others</li> <li>2. Evidence of alcohol or drugs</li> <li>3. Carrying out other tasks while driving</li> <li>4. Carrying passengers or heavy load</li> <li>5. Tiredness</li> <li>6. Aggressive driving, such as driving much too close to vehicle in front, racing, inappropriate attempts to overtake, or cutting in after overtaking</li> <li>7. Driving when knowingly suffering from a medical condition which significantly impairs the offender's driving skills</li> <li>8. Driving a poorly maintained or dangerously loaded vehicle, especially where motivated by commercial concerns</li> </ol> <p><b>Factors indicating greater degree of harm</b></p> <ol style="list-style-type: none"> <li>1. Injury to others</li> <li>2. Damage to other vehicles or property</li> </ol>	<p><b>Factors indicating lower culpability</b></p> <ol style="list-style-type: none"> <li>1. Genuine emergency</li> <li>2. Speed not excessive</li> <li>3. Offence due to inexperience rather than irresponsibility of driver</li> </ol>
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**Form a preliminary view of the appropriate sentence,  
then consider offender mitigation**

Common factors are identified in the pullout card

**Consider a reduction for guilty plea**

**Consider ancillary orders, including compensation and deprivation of property**

Refer to pages 168-174 for guidance on available ancillary orders

**Decide sentence  
Give reasons**

Triable only summarily:

Maximum: Level 5 fine and/or 6 months

Must endorse and may disqualify. If no disqualification, impose 6 points

## Offence seriousness (culpability and harm)

### A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Full period expired but retest not taken	Low level community order	Band C fine to medium level community order 6 points or disqualify for 3 – 6 months
Lengthy period of ban already served	High level community order	Medium level community order to 12 weeks custody Lengthen disqualification for 6 – 12 months beyond expiry of current ban
Recently imposed ban	12 weeks custody	High level community order to 26 weeks custody Lengthen disqualification for 12 – 18 months beyond expiry of current ban

## Offence seriousness (culpability and harm)

### B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

<p><b>Factors indicating higher culpability</b></p> <ol style="list-style-type: none"> <li>1. Never passed test</li> <li>2. Planned long-term evasion</li> <li>3. Vehicle obtained during ban</li> <li>4. Driving for remuneration</li> </ol> <p><b>Factors indicating greater degree of harm</b></p> <ol style="list-style-type: none"> <li>1. Distance driven</li> <li>2. Evidence of associated bad driving</li> <li>3. Offender caused accident</li> </ol>	<p><b>Factors indicating lower culpability</b></p> <ol style="list-style-type: none"> <li>1. Defendant not present when disqualification imposed and genuine reason why unaware of ban</li> <li>2. Genuine emergency established</li> </ol>
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### Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

### Consider a reduction for guilty plea

### Consider ancillary orders, including deprivation of property

Refer to pages 168-174 for guidance on available ancillary orders

### Decide sentence Give reasons

#### Note

An offender convicted of this offence will always have at least one relevant previous conviction for the offence that resulted in disqualification. The starting points and ranges take this into account; any other previous convictions should be considered in the usual way – see pages 17 and 145.

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## Excess alcohol (drive/attempt to drive)

Road Traffic Act 1988, s.5(1)(a)

Triable only summarily:

Maximum: Level 5 fine and/or 6 months

- Must endorse and disqualify for at least 12 months
- Must disqualify for **at least** 2 years if offender has had two or more disqualification for periods of 56 days or more in preceding 3 years – **refer to page 184 and consult your legal adviser for further guidance**
- Must disqualify for **at least** 3 years if offender has been convicted of a relevant offence in preceding 10 years – **refer to page 184 and consult your legal adviser for further guidance**

If there is a delay in sentencing after conviction, consider interim disqualification

### Offence seriousness (culpability and harm)

#### A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Level of alcohol			Starting point	Range	Disqualification	Disqual. 2nd offence in 10 years – see note above
Breath (µg)	Blood (mg)	Urine (mg)				
36 – 59	81 – 137	108 – 183	Band C Fine	Band C Fine	12 – 16 months	36 – 40 months
60 – 89	138 – 206	184 – 274	Band C Fine	Band C Fine	17 – 22 months	36 – 46 months
90 – 119	207 – 275	275 – 366	Medium level community order	Low level community order to high level community order	23 – 28 months	36 – 52 months
120 – 150 and above	276 – 345 and above	367 – 459 and above	12 weeks custody	High level community order to 26 weeks custody	29 – 36 months	36 – 60 months

### Offence seriousness (culpability and harm)

#### B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

<p><b>Factors indicating higher culpability</b></p> <ol style="list-style-type: none"> <li>1. LGV, HGV, PSV etc.</li> <li>2. Poor road or weather conditions</li> <li>3. Carrying passengers</li> <li>4. Driving for hire or reward</li> <li>5. Evidence of unacceptable standard of driving</li> </ol> <p><b>Factors indicating greater degree of harm</b></p> <ol style="list-style-type: none"> <li>1. Involved in accident</li> <li>2. Location e.g. near school</li> <li>3. High level of traffic or pedestrians in the vicinity</li> </ol>	<p><b>Factors indicating lower culpability</b></p> <ol style="list-style-type: none"> <li>1. Genuine emergency established *</li> <li>2. Spiked drinks *</li> <li>3. Very short distance driven *</li> </ol> <p>* even where not amounting to special reasons</p>
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**Form a preliminary view of the appropriate sentence,  
then consider offender mitigation**

Common factors are identified in the pullout card

**Consider a reduction for guilty plea**

**Consider offering drink/drive rehabilitation course  
Consider ancillary orders, including forfeiture or  
suspension of personal liquor licence**

Refer to pages 168-174 for guidance on available ancillary orders

**Decide sentence  
Give reasons**

Triable only summarily:  
Maximum: Level 4 fine and/or 3 months

Must endorse and may disqualify. If no disqualification, impose 10 points

### Offence seriousness (culpability and harm)

#### A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Level of alcohol			Starting point	Range
Breath (µg)	Blood (mg)	Urine (mg)		
36 – 59	81 – 137	108 – 183	Band B fine	Band B fine 10 points
60 – 89	138 – 206	184 – 274	Band B fine	Band B fine 10 points OR consider disqualification
90 – 119	207 – 275	275 – 366	Band C fine	Band C fine to medium level community order Consider disqualification up to 6 months OR 10 points
120 – 150 and above	276 – 345 and above	367 – 459 and above	Medium level community order	Low level community order to 6 weeks custody Disqualify 6-12 months

### Offence seriousness (culpability and harm)

#### B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card –  
the following may be particularly relevant but **these lists are not exhaustive**

##### Factors indicating higher culpability

1. LGV, HGV, PSV etc.
2. Ability to drive seriously impaired
3. High likelihood of driving
4. Driving for hire or reward

##### Factor indicating lower culpability

1. Low likelihood of driving

#### Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

#### Consider a reduction for guilty plea

#### Consider ancillary orders, including forfeiture or suspension of personal liquor licence

Refer to pages 168-174 for guidance on available ancillary orders

#### Decide sentence Give reasons

# Fail to stop/report road accident

Triable only summarily:

Maximum: Level 5 fine and/or 6 months

Must endorse and may disqualify. If no disqualification, impose 5 – 10 points

<b>Offence seriousness (culpability and harm)</b> <b>A. Identify the appropriate starting point</b> Starting points based on first time offender pleading not guilty		
Examples of nature of activity	Starting point	Range
Minor damage/injury or stopped at scene but failed to exchange particulars or report	Band B fine	Band B fine 5 – 6 points
Moderate damage/injury or failed to stop and failed to report	Band C fine	Band C fine 7 – 8 points Consider disqualification
Serious damage/injury and/or evidence of bad driving	High level community order	Band C fine to 26 weeks custody Disqualify 6 – 12 months OR 9 – 10 points

<b>Offence seriousness (culpability and harm)</b> <b>B. Consider the effect of aggravating and mitigating factors (other than those within examples above)</b> Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but <b>these lists are not exhaustive</b>	
<b>Factors indicating higher culpability</b> 1. Evidence of drink or drugs/evasion of test 2. Knowledge/suspicion that personal injury caused (where not an element of the offence) 3. Leaving injured party at scene 4. Giving false details	<b>Factors indicating lower culpability</b> 1. Believed identity known 2. Genuine fear of retribution 3. Subsequently reported

**Form a preliminary view of the appropriate sentence, then consider offender mitigation**  
 Common factors are identified in the pullout card

**Consider a reduction for guilty plea**

**Consider ancillary orders, including compensation**  
 Refer to pages 168-174 for guidance on available ancillary orders

**Decide sentence**  
**Give reasons**

# Fail to provide specimen for analysis (drive/attempt to drive)

Road Traffic Act 1988, s.7(6)

Triable only summarily:

Maximum: Level 5 fine and/or 6 months

- Must endorse and disqualify for at least 12 months
- Must disqualify for **at least** 2 years if offender has had two or more disqualifications for periods of 56 days or more in preceding 3 years – **refer to page 184 and consult your legal adviser for further guidance**
- Must disqualify for **at least** 3 years if offender has been convicted of a relevant offence in preceding 10 years – **refer to page 184 and consult your legal adviser for further guidance**

**If there is a delay in sentencing after conviction, consider interim disqualification**

Note: the final column below provides guidance regarding the length of disqualification that may be appropriate in cases to which the 3 year minimum applies. The period to be imposed in any individual case will depend on an assessment of all the relevant circumstances, including the length of time since the earlier ban was imposed and the gravity of the current offence.

## Offence seriousness (culpability and harm)

### A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range	Disqualification	Disqual. 2nd offence in 10 years
Defendant refused test when had honestly held but unreasonable excuse	Band C fine	Band C fine	12 – 16 months	36 – 40 months
Deliberate refusal or deliberate failure	Low level community order	Band C fine to high level community order	17 – 28 months	36 – 52 months
Deliberate refusal or deliberate failure where evidence of serious impairment	12 weeks custody	High level community order to 26 weeks custody	29 – 36 months	36 – 60 months

## Offence seriousness (culpability and harm)

### B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

<p><b>Factors indicating higher culpability</b></p> <ol style="list-style-type: none"> <li>1. Evidence of unacceptable standard of driving</li> <li>2. LGV, HGV, PSV etc.</li> <li>3. Obvious state of intoxication</li> <li>4. Driving for hire or reward</li> </ol> <p><b>Factor indicating greater degree of harm</b></p> <ol style="list-style-type: none"> <li>1. Involved in accident</li> </ol>	<p><b>Factor indicating lower culpability</b></p> <ol style="list-style-type: none"> <li>1. Genuine but unsuccessful attempt to provide specimen</li> </ol>
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### Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

### Consider a reduction for guilty plea

### Consider offering drink/drive rehabilitation course; consider ancillary orders

Refer to pages 168-174 for guidance on available ancillary orders

### Decide sentence Give reasons

# Fail to provide specimen for analysis (in charge)

Triable only summarily:

Maximum: Level 4 fine and/or 3 months

Must endorse and may disqualify. If no disqualification, impose 10 points

<b>Offence seriousness (culpability and harm)</b> <b>A. Identify the appropriate starting point</b> Starting points based on first time offender pleading not guilty		
Examples of nature of activity	Starting point	Range
Defendant refused test when had honestly held but unreasonable excuse	Band B fine	Band B fine 10 points
Deliberate refusal or deliberate failure	Band C fine	Band C fine to medium level community order Consider disqualification OR 10 points
Deliberate refusal or deliberate failure where evidence of serious impairment	Medium level community order	Low level community order to 6 weeks custody Disqualify 6 -12 months

<b>Offence seriousness (culpability and harm)</b> <b>B. Consider the effect of aggravating and mitigating factors (other than those within examples above)</b> Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but <b>these lists are not exhaustive</b>	
<b>Factors indicating higher culpability</b> 1. Obvious state of intoxication 2. LGV, HGV, PSV etc. 3. High likelihood of driving 4. Driving for hire or reward	<b>Factors indicating lower culpability</b> 1. Genuine but unsuccessful attempt to provide specimen 2. Low likelihood of driving

**Form a preliminary view of the appropriate sentence, then consider offender mitigation**  
 Common factors are identified in the pullout card

**Consider a reduction for guilty plea**

**Consider ancillary orders**  
 Refer to pages 168-174 for guidance on available ancillary orders

**Decide sentence**  
**Give reasons**

Triable only summarily:  
Maximum: Level 5 fine

Must endorse and may disqualify. If no disqualification, impose 6-8 points – see notes below.

## Offence seriousness (culpability and harm)

### A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Using a motor vehicle on a road or other public place without insurance	Band C fine	Band C fine 6 points – 12 months disqualification – see notes below

## Offence seriousness (culpability and harm)

### B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

<b>Factors indicating higher culpability</b> <ol style="list-style-type: none"><li>1. Never passed test</li><li>2. Gave false details</li><li>3. Driving LGV, HGV, PSV etc.</li><li>4. Driving for hire or reward</li><li>5. Evidence of sustained uninsured use</li></ol> <b>Factor indicating greater degree of harm</b> <ol style="list-style-type: none"><li>1. Involved in accident</li><li>2. Accident resulting in injury</li></ol>	<b>Factors indicating lower culpability</b> <ol style="list-style-type: none"><li>1. Responsibility for providing insurance rests with another</li><li>2. Genuine misunderstanding</li><li>3. Recent failure to renew or failure to transfer vehicle details where insurance was in existence</li><li>4. Vehicle not being driven</li></ol>
--	---

### Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

### Consider a reduction for guilty plea

### Consider ancillary orders

Refer to pages 168-174 for guidance on available ancillary orders

### Decide sentence

### Give reasons

## Notes

Consider range from 7 points – 2 months disqualification where vehicle was being driven and no evidence that the offender has held insurance.

Consider disqualification of 6 – 12 months if evidence of sustained uninsured use and/or involvement in accident.

# Speeding

Triable only summarily:

Maximum: Level 3 fine (level 4 if motorway)

Must endorse and may disqualify. If no disqualification, impose 3-6 points

<b>Offence seriousness (culpability and harm)</b>			
<b>A. Identify the appropriate starting point</b>			
Starting points based on first time offender pleading not guilty			
<b>Speed limit (mph)</b>	<b>Recorded speed (mph)</b>		
20	21 – 30	31 – 40	41 – 50
30	31 – 40	41 – 50	51 – 60
40	41 – 55	56 – 65	66 – 75
50	51 – 65	66 – 75	76 – 85
60	61 – 80	81 – 90	91 – 100
70	71 – 90	91 – 100	101 – 110
<b>Starting point</b>	<b>Band A fine</b>	<b>Band B fine</b>	<b>Band B fine</b>
<b>Range</b>	<b>Band A fine</b>	<b>Band B fine</b>	<b>Band B fine</b>
<b>Points/disqualification</b>	3 points	4 – 6 points OR Disqualify 7 – 28 days	Disqualify 7 – 56 days OR 6 points

<b>Offence seriousness (culpability and harm)</b>	
<b>B. Consider the effect of aggravating and mitigating factors (other than those within examples above)</b>	
Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but <b>these lists are not exhaustive</b>	
<p><b>Factors indicating higher culpability</b></p> <ol style="list-style-type: none"> <li>1. Poor road or weather conditions</li> <li>2. LGV, HGV, PSV etc.</li> <li>3. Towing caravan/trailer</li> <li>4. Carrying passengers or heavy load</li> <li>5. Driving for hire or reward</li> <li>6. Evidence of unacceptable standard of driving over and above speed</li> </ol> <p><b>Factors indicating greater degree of harm</b></p> <ol style="list-style-type: none"> <li>1. Location e.g. near school</li> <li>2. High level of traffic or pedestrians in the vicinity</li> </ol>	<p><b>Factor indicating lower culpability</b></p> <ol style="list-style-type: none"> <li>1. Genuine emergency established</li> </ol>

**Form a preliminary view of the appropriate sentence, then consider offender mitigation**  
Common factors are identified in the pullout card

**Consider a reduction for guilty plea**

**Consider ancillary orders**  
Refer to pages 168-174 for guidance on available ancillary orders

**Decide sentence**  
**Give reasons**

# Unfit through drink or drugs (drive/attempt to drive)

Road Traffic Act 1988, s.4(1)

Triable only summarily:

Maximum: Level 5 fine and/or 6 months

- Must endorse and disqualify for at least 12 months
- Must disqualify for **at least 2 years** if offender has had two or more disqualifications for periods of 56 days or more in preceding 3 years – **refer to page 184 and consult your legal adviser for further guidance**
- Must disqualify for **at least 3 years** if offender has been convicted of a relevant offence in preceding 10 years – **refer to page 184 and consult your legal adviser for further guidance**

**If there is a delay in sentencing after conviction, consider interim disqualification**

Note: the final column below provides guidance regarding the length of disqualification that may be appropriate in cases to which the 3 year minimum applies. The period to be imposed in any individual case will depend on an assessment of all the relevant circumstances, including the length of time since the earlier ban was imposed and the gravity of the current offence.

<b>Offence seriousness (culpability and harm)</b> <b>A. Identify the appropriate starting point</b> Starting points based on first time offender pleading not guilty				
Examples of nature of activity	Starting point	Range	Disqualification	Disqual. 2nd offence in 10 years
Evidence of moderate level of impairment and no aggravating factors	Band C fine	Band C fine	12 – 16 months	36 – 40 months
Evidence of moderate level of impairment and presence of one or more aggravating factors listed below	Band C fine	Band C fine	17 – 22 months	36 – 46 months
Evidence of high level of impairment and no aggravating factors	Medium level community order	Low level community order to high level community order	23 – 28 months	36 – 52 months
Evidence of high level of impairment and presence of one or more aggravating factors listed below	12 weeks custody	High level community order to 26 weeks custody	29 – 36 months	36 – 60 months

<b>Offence seriousness (culpability and harm)</b> <b>B. Consider the effect of aggravating and mitigating factors (other than those within examples above)</b> Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but <b>these lists are not exhaustive</b>	
<b>Factors indicating higher culpability</b> <ol style="list-style-type: none"> <li>1. LGV, HGV, PSV etc.</li> <li>2. Poor road or weather conditions</li> <li>3. Carrying passengers</li> <li>4. Driving for hire or reward</li> <li>5. Evidence of unacceptable standard of driving</li> </ol> <b>Factors indicating greater degree of harm</b> <ol style="list-style-type: none"> <li>1. Involved in accident</li> <li>2. Location e.g. near school</li> <li>3. High level of traffic or pedestrians in the vicinity</li> </ol>	<b>Factors indicating lower culpability</b> <ol style="list-style-type: none"> <li>1. Genuine emergency established *</li> <li>2. Spiked drinks *</li> <li>3. Very short distance driven *</li> </ol> * even where not amounting to special reasons



**Form a preliminary view of the appropriate sentence,  
then consider offender mitigation**

Common factors are identified in the pullout card

**Consider a reduction for guilty plea**

**Consider offering drink/drive rehabilitation course**

**Consider ancillary orders**

Refer to pages 168-174 for guidance on available ancillary orders

**Decide sentence**

**Give reasons**

# Unfit through drink or drugs (in charge)

Road Traffic Act 1988, s.4(2)

Triable only summarily:

Maximum: Level 4 fine and/or 3 months

Must endorse and may disqualify. If no disqualification, impose 10 points

## Offence seriousness (culpability and harm)

### A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Evidence of moderate level of impairment and no aggravating factors	Band B fine	Band B fine 10 points
Evidence of moderate level of impairment and presence of one or more aggravating factors listed below	Band B fine	Band B fine 10 points or consider disqualification
Evidence of high level of impairment and no aggravating factors	Band C fine	Band C fine to medium level community order 10 points or consider disqualification
Evidence of high level of impairment and presence of one or more aggravating factors listed below	High level community order	Medium level community order to 12 weeks custody Consider disqualification OR 10 points

## Offence seriousness (culpability and harm)

### B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

Factors indicating higher culpability	Factor indicating lower culpability
<ol style="list-style-type: none"> <li>1. LGV, HGV, PSV etc.</li> <li>2. High likelihood of driving</li> <li>3. Driving for hire or reward</li> </ol>	<ol style="list-style-type: none"> <li>1. Low likelihood of driving</li> </ol>

### Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

### Consider a reduction for guilty plea

### Consider ancillary orders

Refer to pages 168-174 for guidance on available ancillary orders

### Decide sentence Give reasons

## OFFENCES APPROPRIATE FOR IMPOSITION OF FINE OR DISCHARGE

### Part 1: Offences concerning the driver

Offence	Maximum	Points	Starting point	Special considerations
Fail to co-operate with preliminary (roadside) breath test	L3	4	B	
Fail to give information of driver's identity as required	L3	6	C	For limited companies, endorsement is not available; a fine is the only available penalty
Fail to produce insurance certificate	L4	–	A	Fine per offence, not per document
Fail to produce test certificate	L3	–	A	
Drive otherwise than in accordance with licence (where could be covered)	L3	–	A	
Drive otherwise than in accordance with licence	L3	3 – 6	A	Aggravating factor if no licence ever held

### Part 2: Offences concerning the vehicle

\* The guidelines for some of the offences below differentiate between three types of offender when the offence is committed in the course of business: driver, owner-driver and owner-company. **For owner-driver, the starting point is the same as for driver; however, the court should consider an uplift of at least 25%.**

Offence	Maximum	Points	Starting point	Special considerations
No excise licence	L3 or 5 times annual duty, whichever is greater	–	A (1-3 months unpaid) B (4-6 months unpaid) C (7-12 months unpaid)	Add duty lost
Fail to notify change of ownership to DVLA	L3	–	A	If offence committed in course of business: A (driver) A* (owner-driver) B (owner-company)
No test certificate	L3	–	A	If offence committed in course of business: A (driver) A* (owner-driver) B (owner-company)
Brakes defective	L4	3	B	If offence committed in course of business: B (driver) B* (owner-driver) C (owner-company)  L5 if goods vehicle – see Part 5 below
Steering defective	L4	3	B	If offence committed in course of business: B (driver) B* (owner-driver) C (owner-company)  L5 if goods vehicle – see Part 5 below

Offence	Maximum	Points	Starting point	Special considerations
Tyres defective	L4	3	B	If offence committed in course of business: B (driver) B* (owner-driver) C (owner-company)  L5 if goods vehicle – see Part 5 below  Penalty per tyre
Condition of vehicle/accessories/equipment involving danger of injury (Road Traffic Act 1988, s.40A)	L4	3	B	Must disqualify for at least 6 months if offender has one or more previous convictions for same offence within three years  If offence committed in course of business: B (driver) B* (owner-driver) C (owner-company)  L5 if goods vehicle – see Part 5 below
Exhaust defective	L3	–	A	If offence committed in course of business: A (driver) A* (owner-driver) B (owner-company)
Lights defective	L3	–	A	If offence committed in course of business: A (driver) A* (owner-driver) B (owner-company)

### Part 3: Offences concerning use of vehicle

\* The guidelines for some of the offences below differentiate between three types of offender when the offence is committed in the course of business: driver, owner-driver and owner-company. **For owner-driver, the starting point is the same as for driver; however, the court should consider an uplift of at least 25%.**

Offence	Maximum	Points	Starting point	Special considerations
Weight, position or distribution of load or manner in which load secured involving danger of injury (Road Traffic Act 1988, s.40A)	L4	3	B	Must disqualify for at least 6 months if offender has one or more previous convictions for same offence within three years  If offence committed in course of business: A (driver) A* (owner-driver) B (owner-company)  L5 if goods vehicle – see Part 5 below
Number of passengers or way carried involving danger of injury (Road Traffic Act 1988, s.40A)	L4	3	B	If offence committed in course of business: A (driver) A* (owner-driver) B (owner-company)  L5 if goods vehicle – see Part 5 below
Position or manner in which load secured (not involving danger) (Road Traffic Act 1988, s.42)	L3	–	A	L4 if goods vehicle – see Part 5 below

Offence	Maximum	Points	Starting point	Special considerations
Overloading/exceeding axle weight	L5	–	A	Starting point caters for cases where the overload is up to and including 10%. Thereafter, 10% should be added to the penalty for each additional 1% of overload  Penalty per axle  If offence committed in course of business: A (driver) A* (owner-driver) B (owner-company)  If goods vehicle – see Part 5 below
Dangerous parking	L3	3	A	
Pelican/zebra crossing contravention	L3	3	A	
Fail to comply with traffic sign (e.g. red traffic light, stop sign, double white lines, no entry sign)	L3	3	A	
Fail to comply with traffic sign (e.g. give way sign, keep left sign, temporary signs)	L3	–	A	
Fail to comply with police constable directing traffic	L3	3	A	
Fail to stop when required by police constable	L5 (mechanically propelled vehicle) L3 (cycle)	–	B	
Use of mobile telephone	L3	3	A	
Seat belt offences	L2 (adult or child in front) L2 (child in rear)	–	A	
Fail to use appropriate child car seat	L2	–	A	

#### Part 4: Motorway offences

Offence	Maximum	Points	Starting point	Special considerations
Drive in reverse or wrong way on slip road	L4	3	B	
Drive in reverse or wrong way on motorway	L4	3	C	
Drive off carriageway (central reservation or hard shoulder)	L4	3	B	
Make U turn	L4	3	C	
Learner driver or excluded vehicle	L4	3	B	
Stop on hard shoulder	L4	–	A	
Vehicle in prohibited lane	L4	3	A	
Walk on motorway, slip road or hard shoulder	L4	–	A	

## Part 5: Offences re buses/goods vehicles over 3.5 tonnes (GVW)

\* The guidelines for these offences differentiate between three types of offender: driver; owner-driver; and owner-company. **For owner-driver, the starting point is the same as for driver; however, the court should consider an uplift of at least 25%.**

\*\* In all cases, take safety, damage to roads and commercial gain into account. Refer to page 150 for approach to fines for 'commercially motivated' offences.

Offence	Maximum	Points	Starting point	Special considerations
No goods vehicle plating certificate	L3	–	A (driver) A* (owner-driver) B (owner-company)	
No goods vehicle test certificate	L4	–	B (driver) B* (owner-driver) C (owner-company)	
Brakes defective	L5	3	B (driver) B* (owner-driver) C (owner-company)	
Steering defective	L5	3	B (driver) B* (owner-driver) C (owner-company)	
Tyres defective	L5	3	B (driver) B* (owner-driver) C (owner-company)	Penalty per tyre
Exhaust emission	L4	–	B (driver) B* (owner-driver) C (owner-company)	
Condition of vehicle/accessories/equipment involving danger of injury (Road Traffic Act 1988, s.40A)	L5	3	B (driver) B* (owner-driver) C (owner-company)	Must disqualify for at least 6 months if offender has one or more previous convictions for same offence within three years
Number of passengers or way carried involving danger of injury (Road Traffic Act 1988, s.40A)	L5	3	B (driver) B* (owner-driver) C (owner-company)	Must disqualify for at least 6 months if offender has one or more previous convictions for same offence within three years
Weight, position or distribution of load or manner in which load secured involving danger of injury (Road Traffic Act 1988, s.40A)	L5	3	B (driver) B* (owner-driver) C (owner-company)	Must disqualify for at least 6 months if offender has one or more previous convictions for same offence within three years
Position or manner in which load secured (not involving danger) (Road Traffic Act 1988, s.42)	L4	–	B (driver) B* (owner-driver) C (owner-company)	
Overloading/exceeding axle weight	L5	–	B (driver) B* (owner-driver) C (owner-company)	Starting points cater for cases where the overload is up to and including 10%. Thereafter, 10% should be added to the penalty for each additional 1% of overload  Penalty per axle

<b>Offence</b>	<b>Maximum</b>	<b>Points</b>	<b>Starting point</b>	<b>Special considerations</b>
No operators licence	L4 (PSV) L5 (Goods)	–	B (driver) B* (owner-driver) C (owner-company)	
Speed limiter not used or incorrectly calibrated	L4	–	B (driver) B* (owner-driver) C (owner-company)	
Tachograph not used/not working	L5	–	B (driver) B* (owner-driver) C (owner-company)	
Exceed permitted driving time/periods of duty	L4	–	B (driver) B* (owner-driver) C (owner-company)	
Fail to keep/return written record sheets	L4	–	B (driver) B* (owner-driver) C (owner-company)	
Falsify or alter records with intent to deceive	L5/2 years	–	B (driver) B* (owner-driver) C (owner-company)	Either way offence

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# Approach to the assessment of fines

## Introduction

1. The amount of a fine must reflect the seriousness of the offence.<sup>1</sup>
2. The court must also take into account the financial circumstances of the offender; this applies whether it has the effect of increasing or reducing the fine.<sup>2</sup>
3. The aim is for the fine to have an equal impact on offenders with different financial circumstances; it should be a hardship but should not force the offender below a reasonable 'subsistence' level. Normally a fine should be of an amount that is capable of being paid within 12 months though there may be exceptions to this.
4. The guidance below aims to establish a clear, consistent and principled approach to the assessment of fines that will apply fairly in the majority of cases. However, it is impossible to anticipate every situation that may be encountered and in each case the court will need to exercise its judgment to ensure that the fine properly reflects the seriousness of the offence and takes into account the financial circumstances of the offender.

## Fine bands

5. For the purpose of the offence guidelines, a fine is usually based on one of three bands (A, B or C). The selection of the relevant fine band, and the position of the individual offence within that band, is determined by the seriousness of the offence. In some cases fine bands D – F may be used even where the community or custody threshold have been passed.

	Starting point	Range
Fine Band A	50% of relevant weekly income	25 – 75% of relevant weekly income
Fine Band B	100% of relevant weekly income	75 – 125% of relevant weekly income
Fine Band C	150% of relevant weekly income	125 – 175% of relevant weekly income
Fine Band D	250% of relevant weekly income	200 – 300% of relevant weekly income
Fine Band E	400% of relevant weekly income	300 – 500% of relevant weekly income
Fine Band F	600% of relevant weekly income	500 – 700% of relevant weekly income

6. For an explanation of the meaning of starting point and range, both generally and in relation to fines, see pages 16-17.

## Definition of relevant weekly income

7. The seriousness of an offence determines the choice of fine band and the position of the offence within the range for that band. The offender's financial circumstances are taken into account by expressing that position as a proportion of the offender's relevant weekly income.
8. Where:
  - an offender is in receipt of income from employment or is self-employed **and**
  - that income is **more than £120** per week after deduction of tax and national insurance (or equivalent where the offender is self-employed),  
**the actual income is the relevant weekly income.**

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<sup>1</sup> Criminal Justice Act 2003 s.164(2)

<sup>2</sup> Ibid ss. 164(3) and 164(4)



9. Where:

- an offender's only source of income is state benefit (including where there is relatively low additional income as permitted by the benefit regulations) **or**
- the offender is in receipt of income from employment or is self-employed but the amount of income after deduction of tax and national insurance is **£120 per week or less**,

the **relevant weekly income is deemed to be £120**.

Additional information about the basis for this approach is set out in paragraphs 26-31 below.

10. In calculating relevant weekly income no account should be taken of tax credits, housing benefit, child benefit or similar.

No reliable information

11. Where an offender has failed to provide information, or the court is not satisfied that it has been given sufficient reliable information, it is entitled to make such determination as it thinks fit regarding the financial circumstances of the offender.<sup>3</sup> Any determination should be clearly stated on the court records for use in any subsequent variation or enforcement proceedings. In such cases, a record should also be made of the applicable fine band and the court's assessment of the position of the offence within that band based on the seriousness of the offence.
12. Where there is no information on which a determination can be made, the court should proceed on the basis of an assumed **relevant weekly income of £440**. This is derived from national median pre-tax earnings; a gross figure is used as, in the absence of financial information from the offender, it is not possible to calculate appropriate deductions.<sup>4</sup>
13. Where there is some information that tends to suggest a significantly lower or higher income than the recommended £440 default sum, the court should make a determination based on that information.
14. A court is empowered to remit a fine in whole or part if the offender subsequently provides information as to means.<sup>5</sup> The assessment of offence seriousness and, therefore, the appropriate fine band and the position of the offence within that band are not affected by the provision of this information.

### Assessment of financial circumstances

15. While the initial consideration for the assessment of a fine is the offender's relevant weekly income, the court is required to take account of the offender's financial circumstances including assets more broadly. Guidance on important parts of this assessment is set out below.
16. An offender's financial circumstances may have the effect of increasing or reducing the amount of the fine; however, they are not relevant to the assessment of offence seriousness. They should be considered separately from the selection of the appropriate fine band and the court's assessment of the position of the offence within the range for that band.

### Out of the ordinary expenses

17. In deciding the proportions of relevant weekly income that are the starting points and ranges for each fine band, account has been taken of reasonable living expenses. Accordingly, no further allowance should normally be made for these. In addition, no allowance should normally be made where the offender has dependants.
18. Outgoings will be relevant to the amount of the fine only where the expenditure is out of the ordinary and substantially reduces the ability to pay a financial penalty so that the requirement to

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<sup>3</sup> Criminal Justice Act 2003, s.164(5)

<sup>4</sup> This figure is a projected estimate based upon the 2012-13 Survey of Personal Incomes using economic assumptions consistent with the Office for Budget Responsibility's March 2015 economic and fiscal outlook. The latest actual figure is for 2012-13, when median pre-tax income was £404 per week (<https://www.gov.uk/government/statistics/shares-of-total-income-before-and-after-tax-and-income-tax-for-percentile-groups>).

<sup>5</sup> Criminal Justice Act 2003, s.165(2)

pay a fine based on the standard approach would lead to undue hardship.

#### Unusually low outgoings

19. Where the offender's living expenses are substantially lower than would normally be expected, it may be appropriate to adjust the amount of the fine to reflect this. This may apply, for example, where an offender does not make any financial contribution towards his or her living costs.

#### Savings

20. Where an offender has savings these will not normally be relevant to the assessment of the amount of a fine although they may influence the decision on time to pay.

21. However, where an offender has little or no income but has substantial savings, the court may consider it appropriate to adjust the amount of the fine to reflect this.

#### Household has more than one source of income

22. Where the household of which the offender is a part has more than one source of income, the fine should normally be based on the income of the offender alone.

23. However, where the offender's part of the income is very small (or the offender is wholly dependent on the income of another), the court may have regard to the extent of the household's income and assets which will be available to meet any fine imposed on the offender.<sup>6</sup>

#### Potential earning capacity

24. Where there is reason to believe that an offender's potential earning capacity is greater than his or her current income, the court may wish to adjust the amount of the fine to reflect this.<sup>7</sup> This may apply, for example, where an unemployed offender states an expectation to gain paid employment within a short time. The basis for the calculation of fine should be recorded in order to ensure that there is a clear record for use in variation or enforcement proceedings.

#### High income offenders

25. Where the offender is in receipt of very high income, a fine based on a proportion of relevant weekly income may be disproportionately high when compared with the seriousness of the offence. In such cases, the court should adjust the fine to an appropriate level; as a general indication, in most cases the fine for a first time offender pleading not guilty should not exceed 75% of the maximum fine. In the case of fines which are unlimited the court should decide the appropriate level with the guidance of the legal adviser.

### **Approach to offenders on low income**

26. An offender whose primary source of income is state benefit will generally receive a base level of benefit (e.g. jobseeker's allowance, a relevant disability benefit or income support) and may also be eligible for supplementary benefits depending on his or her individual circumstances (such as child tax credits, housing benefit, council tax benefit and similar). In some cases these benefits may have been replaced by Universal Credit.

27. If relevant weekly income were defined as the amount of benefit received, this would usually result in higher fines being imposed on offenders with a higher level of need; in most circumstances that would not properly balance the seriousness of the offence with the financial circumstances of the offender. While it might be possible to exclude from the calculation any allowance above the basic entitlement of a single person, that could be complicated and time consuming.

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<sup>6</sup> *R v Engen* [2004] EWCA Crim 1536 (CA)

<sup>7</sup> *R v Little* (unreported) 14 April 1976 (CA)

28. Similar issues can arise where an offender is in receipt of a low earned income since this may trigger eligibility for means related benefits such as working tax credits and housing benefit depending on the particular circumstances. It will not always be possible to determine with any confidence whether such a person's financial circumstances are significantly different from those of a person whose primary source of income is state benefit.
29. For these reasons, a simpler and fairer approach to cases involving offenders in receipt of low income (whether primarily earned or as a result of benefit) is to identify an amount that is deemed to represent the offender's relevant weekly income.
30. While a precise calculation is neither possible nor desirable, it is considered that an amount that is approximately half-way between the base rate for jobseeker's allowance and the net weekly income of an adult earning the minimum wage for 30 hours per week represents a starting point that is both realistic and appropriate; this is currently £120.<sup>8</sup> The calculation is based on a 30 hour working week in recognition of the fact that many of those on minimum wage do not work a full 37 hour week and that lower minimum wage rates apply to younger people.
31. The figures will be updated in due course in accordance with any changes to benefit and minimum wage levels.

### **Offence committed for 'commercial' purposes**

32. Some offences are committed with the intention of gaining a significant commercial benefit. These often occur where, in order to carry out an activity lawfully, a person has to comply with certain processes which may be expensive. They include, for example, 'taxi-touting' (where unauthorised persons seek to operate as taxi drivers) and 'fly-tipping' (where the cost of lawful disposal is considerable).
33. In some of these cases, a fine based on the standard approach set out above may not reflect the level of financial gain achieved or sought through the offending. Accordingly:
  - (a) where the offender has generated income or avoided expenditure to a level that can be calculated or estimated, the court may wish to consider that amount when determining the financial penalty;
  - (b) where it is not possible to calculate or estimate that amount, the court may wish to draw on information from the enforcing authorities about the general costs of operating within the law.

### **Offence committed by an organisation**

34. Where an offence is committed by an organisation, guidance on fines can be found at in the environmental offences guideline at page 308.
35. See the Criminal Practice Direction CPD XIII Listing Annex 3 for directions on dealing with cases involving very large fines in the magistrates' court.<sup>9</sup>

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<sup>8</sup> With effect from 1 October 2014, the minimum wage is £6.50 per hour for an adult aged 21 or over. Based on a 30 hour week, this equates to approximately £189 after deductions for tax and national insurance. To ensure equivalence of approach, the level of jobseeker's allowance for a single person aged 18 to 24 has been used for the purpose of calculating the mid point; this is currently £57.90.

<sup>9</sup> <https://www.justice.gov.uk/courts/procedure-rules/criminal/rulesmenu>

## Reduction for a guilty plea

36. Where a guilty plea has been entered, the amount of the fine should be reduced by the appropriate proportion. Courts should refer to the *Guilty Plea* guideline.

## Maximum fines

37. A fine must not exceed the statutory limit. Where this is expressed in terms of a 'level', the maxima are:

Level 1	£200
Level 2	£500
Level 3	£1,000
Level 4	£2,500
Level 5	unlimited <sup>10</sup>

See the Criminal Practice Direction XIII Listing Annex 3 for directions on dealing with cases involving very large fines in the magistrates' court.<sup>11</sup>

## Multiple offences

38. Where an offender is to be fined for two or more offences that arose out of the same incident, it will often be appropriate to impose on the most serious offence a fine which reflects the totality of the offending where this can be achieved within the maximum penalty for that offence. 'No separate penalty' should be imposed for the other offences.

39. Where compensation is being ordered, that will need to be attributed to the relevant offence as will any necessary ancillary orders.

## Imposition of fines with custodial sentences

40. A fine and a custodial sentence may be imposed for the same offence although there will be few circumstances in which this is appropriate, particularly where the custodial sentence is to be served immediately. One example might be where an offender has profited financially from an offence but there is no obvious victim to whom compensation can be awarded. Combining these sentences is most likely to be appropriate only where the custodial sentence is short and/or the offender clearly has, or will have, the means to pay.

41. Care must be taken to ensure that the overall sentence is proportionate to the seriousness of the offence and that better off offenders are not able to 'buy themselves out of custody'.

42. Consult your legal adviser if considering lodging fines or costs on the imposition of a custodial sentence.

**Consult your legal adviser in any case in which you are considering combining a fine with a custodial sentence.**

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<sup>10</sup> for offences committed after 13 March 2015. For offences committed before that date the level 5 maximum is £5,000

<sup>11</sup> <https://www.justice.gov.uk/courts/procedure-rules/criminal/rulesmenu>

## Payment

43. A fine is payable in full on the day on which it is imposed. The offender should always be asked for immediate payment when present in court and some payment on the day should be required wherever possible.
44. Where that is not possible, the court may, in certain circumstances,<sup>12</sup> require the offender to be detained. More commonly, a court will allow payments to be made over a period set by the court:
- (a) if periodic payments are allowed, the fine should normally be payable within a maximum of 12 months.
  - (b) compensation should normally be payable within 12 months. However, in exceptional circumstances it may be appropriate to allow it to be paid over a period of up to 3 years.
45. Where fine bands D, E and F apply (see paragraph 5 above), it may be appropriate for the fine to be of an amount that is larger than can be repaid within 12 months. In such cases, the fine should normally be payable within a maximum of 18 months (band D) or 2 years (bands E and F).
46. When allowing payment by instalments **payments should be set at a realistic rate taking into account the offender's disposable income.** The following approach may be useful:

Net weekly income	Suggested starting point for weekly payment
£60 £5	
£120 £10	
£200	£25
£300 £50	
£400 £80	

If the offender has dependants or larger than usual commitments, the weekly payment is likely to be decreased.

47. The payment terms must be included in any collection order made in respect of the amount imposed; see below.

## Collection orders

48. The Courts Act 2003 created a fines collection scheme which provides for greater administrative enforcement of fines. Consult your legal adviser for further guidance.

### Attachment of earnings orders/applications for benefit deductions

49. Unless it would be impracticable or inappropriate to do so, the court must make an attachment of earnings or (AEO) or application for benefit deductions (ABD) whenever:
- compensation is imposed;<sup>13</sup> or
  - the court concludes that the offender is an existing defaulter and that the existing default cannot be disregarded.<sup>14</sup>
50. In other cases, the court may make an AEO or ABD with the offender's consent.<sup>15</sup>

<sup>12</sup> See section 82 of the Magistrates' Court Act for restrictions on the power to impose imprisonment on default.

<sup>13</sup> Courts Act 2003, sch. 5, para. 7A

<sup>14</sup> *ibid.*, para.8

<sup>15</sup> *ibid.*, para.9

51. The court must make a collection order in every case in which a fine or compensation order is imposed unless this would be impracticable or inappropriate.<sup>16</sup> The collection order must state:

- the amount of the sum due, including the amount of any fine, compensation order or other sum;
- whether the court considers the offender to be an existing defaulter;
- whether an AEO or ABD has been made and information about the effect of the order;
- if the court has not made an AEO or ABD, the payment terms;
- if an AEO or ABD has been made, the reserve terms (i.e. the payment terms that will apply if the AEO or ABD fails). It will often be appropriate to set a reserve term of payment in full within 14 days.

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<sup>16</sup> *ibid.*, para.12

## Compensation

### Introduction

1. The court must consider making a compensation order in any case where personal injury, loss or damage has resulted from the offence. It can either be a sentence in its own right or an ancillary order. The court must give reasons if it decides not to order compensation.<sup>17</sup>
2. There is no statutory limit on the amount of compensation that may be imposed in respect of offences for an offender aged 18 or over. Compensation may also be ordered in respect of offences taken into consideration.<sup>18</sup>
3. Where the personal injury, loss or damage arises from a road accident, a compensation order may be made only if there is a conviction for an offence under the Theft Act 1968, or the offender is uninsured and the Motor Insurers' Bureau will not cover the loss.
4. Subject to consideration of the victim's views (see paragraph 6 below), the court must order compensation wherever possible and should not have regard to the availability of other sources such as civil litigation or the Criminal Injuries Compensation Scheme. Any amount paid by an offender under a compensation order will generally be deducted from a subsequent civil award or payment under the Scheme to avoid double compensation.
5. Compensation may be ordered for such amount as the court considers appropriate having regard to any evidence and any representations made by the offender or prosecutor. The court must also take into account the offender's means (see also paragraphs 9 -11 below).
6. Compensation should benefit, not inflict further harm on, the victim. Any financial recompense from the offender may cause distress. A victim may or may not want compensation from the offender and assumptions should not be made either way. The victim's views are properly obtained through sensitive discussion by the police or witness care unit, when it can be explained that the offender's ability to pay will ultimately determine whether, and how much, compensation is ordered and whether the compensation will be paid in one lump sum or by instalments. If the victim does not want compensation, this should be made known to the court and respected.
7. In cases where it is difficult to ascertain the full amount of the loss suffered by the victim, consideration should be given to making a compensation order for an amount representing the agreed or likely loss. Where relevant information is not immediately available, it may be appropriate to grant an adjournment if it would enable it to be obtained.
8. The court should consider two types of loss:
  - financial loss sustained as a result of the offence such as the cost of repairing damage or, in case of injury, any loss of earnings or medical expenses;
  - pain and suffering caused by the injury (including terror, shock or distress) and any loss of facility. This should be assessed in light of all factors that appear to the court to be relevant, including any medical evidence, the victim's age and personal circumstances.
9. Once the court has formed a preliminary view of the appropriate level of compensation, it must have regard to the means of the offender so far as they are known. Where the offender has little money, the order may have to be scaled down or additional time allowed to pay; the court may allow compensation to be paid over a period of up to three years in appropriate cases.

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<sup>17</sup> Powers of Criminal Courts (Sentencing) Act 2000, s.130

<sup>18</sup> Ibid. s131

10. The fact that a custodial sentence is imposed does not, in itself, make it inappropriate to order compensation; however, it may be relevant to whether the offender has the means to satisfy the order. **Consult your legal adviser in any case where you are considering combining compensation with a custodial sentence.**

11. Where the court considers that it would be appropriate to impose a fine and a compensation order but the offender has insufficient means to pay both, priority should be given to compensation. Compensation also takes priority over the victim surcharge where the offender's means are an issue.

### Suggested starting points for physical and mental injuries

12. The table below suggests starting points for compensating physical and mental injuries commonly encountered in a magistrates' court. They have been developed to be consistent with the approach in the Criminal Injuries Compensation Authority (CICA) tariff (revised 2012). The CICA tariff makes no award for minor injuries which result in short term disability; the suggested starting points for these injuries are adapted from an earlier tariff.

Type of injury	Description	Suggested starting point
Graze	Depending on size	£75
Bruise	Depending on size	£100
Cut: no permanent scar	Depending on size and whether stitched	£100-£300
Black eye		£125
Eye	Blurred or double vision lasting up to 6 weeks	£500
	Blurred or double vision lasting for 6 to 13 weeks	£1000
	Blurred or double vision lasting for more than 13 weeks (recovery expected)	£1500
Brain	Concussion lasting one week	£1500
Nose	Undisplaced fracture of nasal bone	£1000
	Displaced fracture requiring manipulation	£2000
	Deviated nasal septum requiring septoplasty	£2000
Loss of non-front tooth	Depending on cosmetic effect	£750 per tooth
Loss of front tooth		£1500 per tooth
Facial scar	Minor disfigurement (permanent)	£1000
Arm	Fractured humerus, radius, ulna (substantial recovery)	£1500
Shoulder	Dislocated (substantial recovery)	£900
Wrist	Dislocated/fractured – including scaphoid fracture (substantial recovery)	£2400
	Fractured – colles type (substantial recovery)	£2400



Type of injury	Description	Suggested starting point
Sprained wrist, ankle	Disabling for up to 6 weeks	£500
	Disabling for 6 to 13 weeks	£800
	Disabling for more than 13 weeks	£1000
Finger	Fractured finger other than index finger (substantial recovery)	£300
	Fractured index finger (substantial recovery)	£1200
	Fractured thumb (substantial recovery)	£1750
Leg	Fractured fibula (substantial recovery)	£1000
	Fractured femur, tibia (substantial recovery)	£1800
Abdomen	Injury requiring laparotomy	£1800
Temporary mental anxiety (including terror, shock, distress) not medically verified		£500
Disabling mental anxiety, lasting more than 6 weeks, medically verified*		£1000
Disabling mental illness, lasting up to 28 weeks, confirmed by psychiatric diagnosis*		£1500

\* mental injury is disabling if it has a substantial adverse effect on a person's ability to carry out normal day-to-day activities for the time specified (e.g. impaired work or school performance or effects on social relationships or sexual dysfunction).

13. The following table, which is also based on the Criminal Injuries Compensation Authority tariff, sets out suggested starting points for compensating physical and sexual abuse. It will be rare for cases involving this type of harm to be dealt with in a magistrates' court and it will be important to **consult your legal adviser for guidance in these situations.**

Type of injury	Description	Suggested starting point
Physical abuse of adult	Intermittent physical assaults resulting in accumulation of healed wounds, burns or scalds, but with no appreciable disfigurement	£2000
Physical abuse of child	Isolated or intermittent assault(s) resulting in weals, hair pulled from scalp etc	£1000
	Intermittent physical assaults resulting in accumulation of healed wounds, burns or scalds, but with no appreciable disfigurement	£1000
Sexual abuse of adult	Non-penetrative sexual acts over clothing	£1000
	Non-penetrative sexual act(s) under clothing	£2000
Sexual abuse of child (under 18)	Non-penetrative indecent physical act(s) over clothing	£1000
	Non-penetrative frequent assaults over clothing or non-penetrative indecent act under clothing	£1500 or £2000
	Repetitive indecent acts under clothing	£3300

## Prosecution Costs

Where an offender is convicted of an offence, the court has discretion to make such order as to costs as it considers just and reasonable.<sup>19</sup>

The Court of Appeal has given the following guidance.<sup>20</sup>

- i) an order for costs should never exceed the sum which, having regard to the offender's means and any other financial order imposed, he or she is able to pay and which it is reasonable to order him or her to pay;
- ii) an order for costs should never exceed the sum which the prosecutor actually and reasonably incurred;
- iii) the purpose of the order is to compensate the prosecutor. Where the conduct of the defence has put the prosecutor to avoidable expense, the offender may be ordered to pay some or all of that sum to the prosecutor but the offender must not be punished for exercising the right to defend himself or herself;
- iv) the costs ordered to be paid should not be grossly disproportionate to any fine imposed for the offence. This principle was affirmed in *BPS Advertising Limited v London Borough of Barnet*<sup>21</sup> in which the Court held that, while there is no question of an arithmetical relationship, the question of costs should be viewed in the context of the maximum penalty considered by Parliament to be appropriate for the seriousness of the offence;
- v) if the combined total of the proposed fine and the costs sought by the prosecutor exceeds the sum which the offender could reasonably be ordered to pay, the costs order should be reduced rather than the fine;
- vi) it is for the offender to provide details of his or her financial position so as to enable the court to assess what he or she can reasonably afford to pay. If the offender fails to do so, the court is entitled to draw reasonable inferences as to means from all the circumstances of the case;
- vii) if the court proposes to make any financial order against the offender, it must give him or her fair opportunity to adduce any relevant financial information and to make appropriate submissions.

Where the prosecutor is the Crown Prosecution Service, prosecution costs exclude the costs of the investigation, which are met by the police. In non-CPS cases where the costs of the investigation are incurred by the prosecutor a costs award may cover the costs of investigation as well as prosecution.<sup>22</sup> However, where the investigation was carried out as part of a council officer's routine duties, for which he or she would have been paid in the normal way, this is a relevant factor to be taken into account when deciding the appropriate amount of any costs order.<sup>23</sup>

Where the court wishes to impose costs in addition to a fine, compensation and/or the victim surcharge but the offender has insufficient resources to pay the total amount, the order of priority is:

1. compensation;
2. victim surcharge;
3. fine;
4. costs.

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<sup>19</sup> Prosecution of Offences Act 1985, s18

<sup>20</sup> *R v Northallerton Magistrates' Court, ex parte Dove* [2000] 1 Cr App R (S) 136 (CA)

<sup>21</sup> [2006] EWCA 3335(Admin) QBD

<sup>22</sup> Further guidance is provided in the Criminal Costs Practice Direction and the Criminal Procedure Rules Part 76 see

<https://www.justice.gov.uk/courts/procedure-rules/criminal/rulesmenu>

<sup>23</sup> *ibid*

## Victim Surcharge

1. When sentencing for offences committed on or after 1 October 2012 a court must order the Victim Surcharge in the following ways:<sup>24</sup>

### Offenders aged 18 and older at the date of the offence

Disposal type	Victim Surcharge	
	One or more offences committed before 8 April 2016	All offence(s) committed on or after 8 April 2016
Conditional discharge	£15	£20
Fine	10% of the fine value with a £20 minimum and a £120 maximum <i>(rounded up or down to the nearest pound)</i>	10% of the fine value with a £30 minimum and a £170 maximum <i>(rounded up or down to the nearest pound)</i>
Community order	£60	£85
Suspended sentence order	£80 (six months or less)	£115 (six months or less)
Immediate custody <sup>25</sup>	*£80 (six months or less)	£115 (six months or less)

### Offenders aged under 18 at the date of the offence

Disposal type	Victim Surcharge	
	One or more offences committed before 8 April 2016	All offence(s) committed on or after 8 April 2016
Conditional discharge	£10	£15
Fine, Youth Rehabilitation Order, Community Order or Referral Order	£15	£20
Suspended sentence order	£20	£30
Immediate custody <sup>26</sup>	*£20	£30

\* When sentencing an offender to immediate custody for a single offence committed before 1 September 2014 or more than one offence, at least one of which was committed before 1 September 2014, no surcharge is payable.

<sup>24</sup> Criminal Justice Act 2003, s.161A; Criminal Justice Act 2003 (Surcharge) Order 2012 and The Criminal Justice Act 2003 (Surcharge) (Amendment) Order 2016

<sup>25</sup> The Criminal Justice Act (2003) Surcharge Order 2014

<sup>26</sup> *ibid*

**Person who is not an individual (for example, a company or other legal person)**

	<b>Victim Surcharge</b>	
<b>Disposal type</b>	<b>One or more offences committed before 8 April 2016</b>	<b>All offence(s) committed on or after 8 April 2016</b>
Conditional discharge	£15	£20
Fine	10% of the fine value with a £20 minimum and a £120 maximum <i>(rounded up or down to the nearest pound)</i>	10% of the fine value with a £30 minimum and a £170 maximum <i>(rounded up or down to the nearest pound)</i>

2. Where an offender is dealt with in different ways only one surcharge (whichever attracts the higher sum) will be paid. Where there is more than one fine ordered, then the surcharge for the highest individual fine is assessed, NOT the total of all fines ordered. Where a custodial sentence is imposed the surcharge is based upon the longest individual sentence, NOT the aggregate term imposed.
3. Where the court dealing with an offender for more than one offence and at least one offence was committed when the offender was under 18, the surcharge should be ordered at the rate for under 18s.<sup>27</sup>
4. The surcharge should not be repeated when dealing with breach of a community order, suspended sentence order or conditional discharge.
5. Where the offender has the means to pay the financial impositions of the court, there should be no reduction in compensation or fines whenever the surcharge is ordered. However, when the court:
  - orders the offender to pay both a surcharge and compensation, but the offender is unable to pay both, the court must reduce the amount of the surcharge (if necessary to nil),<sup>28</sup> or
  - orders the offender to pay both a fine and a surcharge, the court may only reduce the fine to the extent that the offender is unable to pay both.<sup>29</sup>
6. Where the offender does not have sufficient means to pay the total financial penalty considered appropriate by the court, the order of priority is: compensation, surcharge, fine, costs.
7. When sentencing for one or more offences any one of which was committed **after 1 April 2007 but before 1 October 2012**, a surcharge is payable only if the offender is dealt with by way of a fine at a flat rate of £15.<sup>30</sup>

<sup>27</sup> Criminal Justice Act 2003 (Surcharge) Order 2012 art.5(3)

<sup>28</sup> Criminal Justice Act 2003, s.161A(3)

<sup>29</sup> Criminal Justice Act 2003, s.164(4A)

<sup>30</sup> Criminal Justice Act 2003 (Surcharge) Order 2012 art.7(2)

## **Criminal Courts Charge**

Please note, this page has been updated to reflect the **cessation of the Criminal Courts Charge** for any sentence imposed on or after 24 December 2015.

## **Community Orders**

**See the Imposition guideline**







## Custodial Sentences

**See the Imposition guideline**



## Ancillary Orders (in alphabetical order)

There are several ancillary orders available in a magistrates' court which should be considered in appropriate cases. Annex A lists the offences in respect of which certain orders are available. The individual offence guidelines also identify ancillary orders particularly likely to be relevant to the offence. **In all cases, consult your legal adviser regarding available orders and their specific requirements and effects.**

Ancillary orders should be taken into account when assessing whether the overall penalty is commensurate with offence seriousness.

### **Anti-social behaviour orders**

These have now been replaced by Criminal Behaviour Orders (see below)

### **Binding over orders**

The court has the power to bind an individual over to keep the peace.<sup>1</sup>

The order is designed to prevent future misconduct and requires the individual to promise to pay a specified sum if the terms of the order are breached. Exercise of the power does not depend upon conviction.

Guidance on the making of binding over orders is set out in the Criminal Practice Directions VII: Sentencing.<sup>2</sup> Key principles include:

- (1) before imposing the order, the court must be satisfied so that it is sure that a breach of the peace involving violence or an imminent threat of violence has occurred, or that there is a real risk of violence in the future. The court should hear evidence and the parties before making any order;
- (2) the court should state its reasons for making the order;
- (3) the order should identify the specific conduct or activity from which the individual must refrain, the length of the order and the amount of the recognisance;
- (4) the length of the order should be proportionate to the harm sought to be avoided and should not generally exceed 12 months;
- (5) when fixing the amount of the recognisance, the court should have regard to the individual's financial resources.

### **Confiscation orders**

Confiscation orders under the Proceeds of Crime Act 2002 may only be made by the Crown Court.

An offender convicted of an offence in a magistrates' court must be committed to the Crown Court where this is requested by the prosecution with a view to a confiscation order being considered.<sup>3</sup>

If the committal is made in respect of an either way offence, the court must state whether it would have committed the offender to the Crown Court for sentencing had the issue of a confiscation order not arisen.

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<sup>1</sup> Justices of the Peace Act 1361, Justices of the Peace Act 1968, s.1(7), Magistrates Court Act 1980, s.115

<sup>2</sup> [www.justice.gov.uk/courts/procedure-rules/criminal/rulesmenu](http://www.justice.gov.uk/courts/procedure-rules/criminal/rulesmenu)

<sup>3</sup> Proceeds of Crime Act 2002, s.70

## Criminal Behaviour Orders

A Criminal Behaviour Order (CBO) is an order which is available on conviction for any criminal offence by any criminal court, introduced by the Anti-social Behaviour, Crime and Policing Act 2014<sup>4</sup> with effect from 20 October 2014. It replaces the former powers of the court to make orders such as an ASBO or a drinking banning order on conviction.

A CBO is an order designed to tackle the most serious and persistent anti-social individuals where their behaviour has brought them before a criminal court. The anti-social behaviour to be addressed does not need to be connected to the criminal behaviour, or activity which led to the conviction. However, if there is no link the court will need to reflect on the reasons for making the order.

A CBO can deal with a wide range of anti-social behaviours following the offender's conviction, for example threatening violence against others in the community, or persistently being drunk and aggressive in public. However, the order should not be designed to stop reasonable, trivial or benign behaviours that have not caused, or are not likely to cause anti-social behaviour.

Any application will be made by the prosecution.<sup>5</sup> The majority of applications will therefore be made by the CPS, either at their own initiative, or at the request of the police. However, it may also be applied for by local councils, providing they are the prosecuting authority in the case. **The court cannot make a CBO of its own volition.**

A CBO may only be made against an offender when they have been sentenced to at least a conditional discharge for the substantive offence.<sup>6</sup> **A CBO cannot be made where the offender has been given an absolute discharge.**

The court may only make a CBO if it is satisfied that two conditions are met.<sup>7</sup>

1. The court must be satisfied, beyond reasonable doubt, that the offender has engaged in behaviour that caused, or was likely to cause, harassment, alarm or distress to one or more persons,<sup>8</sup> **and**
2. That making the order will help in preventing the offender from engaging in such behaviour<sup>9</sup>.

**For the first condition, the burden of proof on the prosecution is to the criminal standard, beyond reasonable doubt.** (There is **no** test of necessity as with ASBOs.)

A CBO may:

1. Prohibit the offender from doing anything described in the order ('a prohibition'), and/or
2. Require the offender to do anything described in the order ('a requirement').<sup>10</sup>

However, any prohibitions and/or requirements must, so far as practicable, avoid any interference with times an offender would normally work, attend school or other educational establishment and any conflict with any other court order or injunction.<sup>11</sup>

If the order requires the offender to do anything, then the order must specify the individual or organisation that is responsible for supervising compliance with the requirement<sup>12</sup> and must hear from them about both the suitability and enforceability of a requirement, before including it in the CBO.<sup>13</sup>

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<sup>4</sup> Anti-social Behaviour, Crime and Policing Act 2014, s.22

<sup>5</sup> *ibid.* s.22(7)

<sup>6</sup> *ibid.* s.22(6)

<sup>7</sup> *ibid.* s.22(2)

<sup>8</sup> *ibid.* s.22(3)

<sup>9</sup> *ibid.* s.22(4)

<sup>10</sup> *ibid.* s.22(5)

<sup>11</sup> *ibid.* s.22(9)

<sup>12</sup> *ibid.* s.24(1)

<sup>13</sup> *ibid.* s.24(2)

The order must be proportionate and reasonable. It will be for the court to decide the measures which are most appropriate and available to tackle the underlying cause of the anti-social behaviour. The order should be tailored to the specific needs of each perpetrator.

When deciding whether or not to make a CBO, the court is entitled to consider evidence submitted by the prosecution and by the offender.<sup>14</sup> It does not matter whether the evidence would have been admissible, or has been heard as part of the criminal proceedings in which the offender was convicted,<sup>15</sup> but it should be relevant to the test to be applied to the making of the order (i.e. that the offender has engaged in behaviour that caused, or was likely to cause, harassment, alarm or distress to any person, and that the court considers that making the order will assist in preventing the offender from engaging in such behaviour). This evidence could include hearsay or bad character evidence. Special measures are available for witnesses who are vulnerable and intimidated witnesses in accordance with Section 16 and 17 Youth Justice and Criminal Evidence Act 1999.<sup>16</sup>

A CBO takes effect on the day it is made,<sup>17</sup> unless the offender is already subject to an existing CBO, in which case it may take effect on the day in which the previous order expires.<sup>18</sup>

The order must specify the period for which it has effect.<sup>19</sup>

In the case of an adult, the order must be for a fixed period of not less than two years or it may be an indefinite period, so that it is made until further order.<sup>20</sup>

An order may specify different periods for which particular prohibitions or requirements have effect within the order.<sup>21</sup>

The court can impose an **interim order** in cases where the offender is convicted but the court is adjourning the hearing of the application for a CBO,<sup>22</sup> before or after sentence for the offence. The offender need not be sentenced to be made subject to an interim order.<sup>23</sup> The court can make an interim order if the court thinks it is just to do so. An interim order can be made until final hearing or further order<sup>24</sup>. When making an interim order the court has the same powers as if it were making a final order.<sup>25</sup>

It is likely that the hearing for a CBO will take place at the same time as the sentencing for the criminal case. For adult offenders, there is no formal consultation requirement. However, in order to ensure that applications are made appropriately and efficiently, there is an expectation that any relevant agencies will have been consulted so that the prosecution have the relevant information to decide whether to make an order or not and if so, in what terms. The prosecution should be prepared to deal with an application on the date of hearing.

The court may deal with the application for a CBO at the same time as it imposes sentence for the offence. Alternatively, the court may sentence the offender for the criminal offence and adjourn the application for a CBO to a later date.<sup>26</sup> However, the court cannot hear an application once sentence has taken place, unless the application was made by the prosecution before sentence was concluded, as an application cannot be made retrospectively.

If the offender does not appear at an adjourned hearing for a CBO, the court may further adjourn the proceedings, issue a warrant for the offender's arrest, or hear the proceedings in the offender's

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<sup>14</sup> *ibid.* s.23(1)

<sup>15</sup> *ibid.* s.23(2)

<sup>16</sup> *ibid.* s.31

<sup>17</sup> *ibid.* s.25(1)

<sup>18</sup> *ibid.* s.25(2)

<sup>19</sup> *ibid.* s.25(3)

<sup>20</sup> *ibid.* s.25(5)

<sup>21</sup> *ibid.* s.25(6)

<sup>22</sup> *ibid.* s.26(1)

<sup>23</sup> *ibid.* s.26(3)

<sup>24</sup> *ibid.* s.26(2)

<sup>25</sup> *ibid.* s.26(4)

<sup>26</sup> *ibid.* s.22(3)

absence<sup>27</sup>. To issue a warrant for the offender's arrest, the court must be satisfied that the offender has been given adequate notice of the time and place for the hearing<sup>28</sup>. To proceed in the offender's absence, the court must be satisfied that the offender has been given adequate notice of the time and place for the hearing and been told if they do not attend, the court may hear the application in their absence.<sup>29</sup>

Further guidance is provided by the Home Office in *Anti-social Behaviour, Crime and Policing Act 2014: Reform of anti-social behaviour powers; Statutory guidance for frontline professionals. July 2014*<sup>30</sup>

## Deprivation Orders

The court has the power to deprive an offender of property used for the purpose of committing or facilitating the commission of an offence, whether or not it deals with the offender in any other way.<sup>31</sup>

Before making the order, the court must have regard to the value of the property and the likely financial and other effects on the offender.

Without limiting the circumstances in which the court may exercise the power, a vehicle is deemed to have been used for the purpose of committing the offence where the offence is punishable by imprisonment and consists of:

- (1) driving, attempting to drive, or being in charge of a motor vehicle;
- (2) failing to provide a specimen; or
- (3) failing to stop and/or report an accident.<sup>32</sup>

## Deprivation of ownership of animal

Where an offender convicted of one of the following offences under the Animal Welfare Act 2006, is the owner of an animal in relation to which the offence is committed, the court may make an order depriving him or her of ownership of the animal and for its disposal.<sup>33</sup>

- (1) causing unnecessary suffering (s.4);
- (2) mutilation (s.5);
- (3) docking of dogs' tails (ss.6(1) and 6(2));
- (4) administration of poisons etc. (s.7);
- (5) fighting etc. (s.8);
- (6) breach of duty to ensure welfare (s.9);
- (7) breach of disqualification order (s.36(9)).

The court is required to give reasons if it decides not to make such an order.

Deprivation of ownership may be ordered instead of or in addition to dealing with the offender in any other way.

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<sup>27</sup> *ibid.* s.23(4)

<sup>28</sup> *ibid.* s.23(5)

<sup>29</sup> *ibid.* s.23(6)

<sup>30</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/332839/StatutoryGuidanceFrontline.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/332839/StatutoryGuidanceFrontline.pdf)

<sup>31</sup> Powers of Criminal Courts (Sentencing) Act 2000, s.143

<sup>32</sup> *ibid.* ss.143(6) and 143(7)

<sup>33</sup> Animal Welfare Act 2006, s.33

## **Destruction orders and contingent destruction orders for dogs**

See the Dangerous Dogs Guideline at page 255 (however note that this guideline is due to be updated – consult your legal adviser)

## **Disqualification from ownership of animals**

Where an offender is convicted of one of the following offences under the Animal Welfare Act 2006, the court may disqualify him or her from owning or keeping animals, dealing in animals, and/or transporting animals.<sup>34</sup>

- (1) causing unnecessary suffering (s.4);
- (2) mutilation (s.5);
- (3) docking of dogs' tails (ss.6(1) and 6(2));
- (4) administration of poisons etc. (s.7);
- (5) fighting etc. (s.8);
- (6) breach of duty to ensure welfare (s.9);
- (7) breach of licensing or registration requirements (s.13(6));
- (8) breach of disqualification order (s.36(9)).

The court is required to give reasons if it decides not to make such an order.

The court may specify the minimum period before an offender may apply for termination of the order under section 43 of the Animal Welfare Act 2006; if no period is specified, an offender may not apply for termination of the order until one year after the order was made.

Disqualification may be imposed instead of or in addition to dealing with the offender in any other way.

## **Disqualification from driving – general power**

The court may disqualify any person convicted of an offence from driving for such period as it thinks fit.<sup>35</sup> This may be instead of or in addition to dealing with the offender in any other way.

The section does not require the offence to be connected to the use of a vehicle. The Court of Appeal has held that the power is available as part of the overall punitive element of a sentence, and the only restrictions on the exercise of the power are those in the statutory provision.<sup>36</sup>

## **Disqualification of company directors**

The Company Directors Disqualification Act 1986 empowers the court to disqualify an offender from being a director or taking part in the promotion, formation or management of a company for up to five years.

An order may be made in two situations:

- (1) where an offender has been convicted of an indictable offence in connection with the promotion, formation, management, liquidation or striking off of a company,<sup>37</sup> or
- (2) where an offender has been convicted of an offence involving a failure to file documents with, or give notice to, the registrar of companies. If the offence is triable only summarily, disqualification can be ordered only where the offender has been the subject of three default orders or convictions in the preceding five years.<sup>38</sup>

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<sup>34</sup> Ibid., s.34

<sup>35</sup> Powers of Criminal Courts (Sentencing) Act 2000, s.146

<sup>36</sup> *R v Cliff* [2004] EWCA Crim 3139

<sup>37</sup> Company Directors Disqualification Act 1988, s.2

<sup>38</sup> Ibid., s.5

## **Drinking banning orders**

These have now been replaced by Criminal Behaviour Orders (see above)

## **Exclusion orders**

The court may make an exclusion order where an offender has been convicted of an offence committed on licensed premises involving the use or threat of violence.<sup>39</sup>

The order prohibits the offender from entering **specified** licensed premises without the consent of the licensee. The term of the order must be between three months and two years.

## **Football banning orders**

The court must make a football banning order where an offender has been convicted of a relevant offence and it is satisfied that there are reasonable grounds to believe that making a banning order would help to prevent violence or disorder.<sup>40</sup> If the court is not so satisfied, it must state that fact and give its reasons.

Relevant offences are those set out in schedule 1 of the Football Spectators Act 1989; see Annex A.

The order requires the offender to report to a police station within five days, may require the offender to surrender his or her passport, and may impose requirements on the offender in relation to any regulated football matches.

Where the order is imposed in addition to a sentence of immediate imprisonment, the term of the order must be between six and ten years. In other cases, the term of the order must be between three and five years.

## **Forfeiture and destruction of drugs**

Where an offender is convicted of an offence under the Misuse of Drugs Act 1971, the court may order forfeiture and destruction of anything shown to the satisfaction of the court to relate to the offence.<sup>41</sup>

## **Forfeiture and destruction of weapons orders**

A court convicting a person of possession of an offensive weapon may make an order for the forfeiture or disposal of the weapon (Prevention of Crime Act 1953, s1(2))

See also deprivation orders above.

## **Forfeiture and destruction of goods bearing unauthorised trade mark**

Where the court is satisfied that an offence under section 92 of the Trade Marks Act 1994 has been committed, it must (on the application of a person who has come into possession of the goods in connection with the investigation or prosecution of the offence) order forfeiture of the goods.<sup>42</sup>

If it considers it appropriate, instead of ordering destruction of the goods, the court may direct that they be released to a specified person on condition that the offending sign is erased, removed or obliterated.

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<sup>39</sup> Licensed Premises (Exclusion of Certain Persons) Act 1980

<sup>40</sup> Football Spectators Act 1989, s.14A

<sup>41</sup> Misuse of Drugs Act 1971, s.27(1)

<sup>42</sup> Trade Marks Act 1994, s.97



## **Forfeiture or suspension of liquor licence**

Where an offender who holds a personal licence to supply alcohol is charged with a 'relevant offence', he or she is required to produce the licence to the court, or inform the court of its existence, no later than his or her first appearance.<sup>43</sup>

'Relevant offences' are listed in schedule 4 of the Licensing Act 2003; see Annex A

Where the offender is convicted, the court may order forfeiture of the licence or suspend it for up to six months.<sup>44</sup> When deciding whether to order forfeiture or suspension, the court may take account of the offender's previous convictions for 'relevant offences'.<sup>45</sup>

Whether or not forfeiture or suspension is ordered, the court is required to notify the licensing authority of the offender's conviction and the sentence imposed.<sup>46</sup>

## **Parenting orders**

The court may make a parenting order where an offender has been convicted of an offence under section 444 of the Education Act 1996 (failing to secure regular attendance at school) and the court is satisfied that the order would be desirable in the interests of preventing the commission of any further offence under that section.<sup>47</sup>

The order may impose such requirements that the court considers desirable in the interests of preventing the commission of a further offence under section 444.

A requirement to attend a counselling or guidance programme as specified by the responsible officer must be included unless the offender has been the subject of a parenting order on a previous occasion.

The term of the order must not exceed 12 months.

## **Restitution orders**

Where goods have been stolen and an offender is convicted of any offence with reference to theft of those goods, the court may make a restitution order.<sup>48</sup>

The court may:

- i) order anyone in possession or control of the stolen goods to restore them to the victim;
- ii) on the application of the victim, order that goods directly or indirectly representing the stolen goods (as being the proceeds of any disposal or realisation of the stolen goods) be transferred to the victim; or
- iii) order that a sum not exceeding the value of the stolen goods be paid to the victim out of any money taken out of the offender's possession on his or her apprehension.

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<sup>43</sup> Licensing Act 2003, s.128(1)

<sup>44</sup> *ibid.*, s.129(2)

<sup>45</sup> *ibid.*, s.129(3)

<sup>46</sup> *ibid.*, s.131

<sup>47</sup> Crime and Disorder 1998, s.8

<sup>48</sup> Powers of Criminal Courts (Sentencing) Act 2000, s 148; Criminal Procedure Rules 2013 (S.I. 2013 No. 1554), r.42.7

## Restraining orders

Where an offender is convicted of any offence, the court may make a restraining order.<sup>49</sup>

The order may prohibit the offender from doing anything for the purpose of protecting the victim of the offence, or any other person mentioned in the order, from further conduct which amounts to harassment or will cause a fear of violence.

The order may have effect for a specified period or until further order.

A court before which a person is **acquitted** of an offence may make a restraining order if the court considers that it is necessary to protect a person from harassment by the defendant.<sup>50</sup> **Consult your legal adviser for guidance.**

## Sexual harm prevention orders

Orders can be made in relation to a person who has been convicted, found not guilty by reason of insanity or found to be under a disability and to have done the act charged, or cautioned etc. for an offence listed in either Schedule 3 or Schedule 5 to the Sexual Offences Act 2003 either in the UK or overseas (see Annex A). This includes offenders whose convictions etc. pre-date the commencement of the 2003 Act.

No application is necessary for the court to make a SHPO at the point of sentence although the prosecutor may wish to invite the court to consider making an order in appropriate cases. The court may ask pre-sentence report writers to consider the suitability of a SHPO on a non-prejudicial basis.

In order to make a SHPO, the court must be satisfied that the offender presents a risk of sexual harm to the public (or particular members of the public) and that an order is necessary to protect against this risk. The details of the offence are likely to be a key factor in the court's decision, together with the offender's previous convictions and the assessment of risk presented by the national probation service in any pre-sentence report. The court may take into consideration the range of other options available to it in respect of protecting the public. The court may want to consider:

1. would an order minimise the risk of harm to the public or to any particular members of the public?
2. is it proportionate?
3. can it be policed effectively?

The only prohibitions which can be imposed by a SHPO are those which are necessary for the purpose of protecting the public from sexual harm from the defendant. These can, however, be wide ranging. An order may, for example, prohibit someone from undertaking certain forms of employment such as acting as a home tutor to children. It may also prohibit the offender from engaging in particular activities on the internet. The decision of the Court of Appeal in *R v Smith and Others* [2011] EWCA Crim 1772 reinforces the need for the terms of a SHPO to be tailored to the exact requirements of the case. SHPOs may be used to limit and manage internet use by an offender, where it is considered proportionate and necessary to do so. The behaviour prohibited by the order might well be considered unproblematic if exhibited by another member of the public – it is the offender's previous offending behaviour and subsequent demonstration that they may pose a risk of further such behaviour, which will make them eligible for an order.

The order may include only negative prohibitions; there is no power to impose positive obligations. The order may have effect for a fixed period (not less than five years) or until further order.

**Consult your legal adviser for guidance.**

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<sup>49</sup> Protection from Harassment Act 1997, s.5

<sup>50</sup> *Ibid*, s5A

**Sexual offences prevention orders**

These have now been replaced by Sexual Harm Prevention Orders. A Sexual Offences Prevention Order may only be made if the order was applied for before 8 March 2015.

**Consult your legal adviser for guidance.**

# Deferred Sentences

**Always consult your legal adviser if you are considering deferring a sentence.**

The court is empowered to defer passing sentence for up to six months.<sup>51</sup> The court may impose any conditions during the period of deferment that it considers appropriate. These could be specific requirements as set out in the provisions for community sentences, restorative justice activities<sup>52</sup> or requirements that are drawn more widely. The purpose of deferment is to enable the court to have regard to the offender's conduct after conviction or any change in his or her circumstances, including the extent to which the offender has complied with any requirements imposed by the court.

Three conditions must be satisfied before sentence can be deferred:

1. the offender must consent (and in the case of restorative justice activities the other participants must consent);<sup>53</sup>
2. the offender must undertake to comply with requirements imposed by the court; and
3. the court must be satisfied that deferment is in the interests of justice.

**Deferred sentences will be appropriate in very limited circumstances;**

- deferred sentences are likely to be relevant predominantly in a small group of cases close to either the community or custodial sentence threshold where, should the offender be prepared to adapt his behaviour in a way clearly specified by the sentencer, the court may be prepared to impose a lesser sentence;
- sentencers should impose specific and measurable conditions that do not involve a serious restriction on liberty;
- the court should give a clear indication of the type of sentence it would have imposed if it had decided not to defer;
- the court should also ensure that the offender understands the consequences of failure to comply with the court's wishes during the deferment period.

If the offender fails to comply with any requirement imposed in connection with the deferment, or commits another offence, he or she can be brought back to court before the end of the deferment period and the court can proceed to sentence.

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<sup>51</sup> Powers of Criminal Courts (Sentencing) Act 2000, s.1 as amended by Criminal Justice Act 2003, s.278 and sch.23, para.1

<sup>52</sup> *ibid.* s.1ZA as inserted by the Crime and Courts Act 2013, s 44, Sch 16, Pt 2, para 5

<sup>53</sup> *ibid.* s.1ZA(3)

## Offences committed in a domestic context

1. Domestic violence is defined as:

Any incident or pattern of incidents of controlling, coercive or threatening behaviour, violence or abuse between those aged 16 or over who are or have been intimate partners or family members regardless of gender or sexuality. This can encompass but is not limited to the following types of abuse:

- psychological
- physical
- sexual
- financial
- emotional

Controlling behaviour is: a range of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour.

Coercive behaviour is: an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten the victim.

This definition includes so called 'honour' based violence, female genital mutilation (FGM) and forced marriage. Victims of domestic violence are not confined to one gender or ethnic group.

2. When sentencing an offence committed in a domestic context, refer to the Sentencing Guidelines Council's definitive guideline *Overarching Principles: Domestic Violence*, published 7 December 2006. The guideline emphasises that:

- as a starting point for sentence, offences committed in a domestic context should be regarded as no less serious than offences committed in a non-domestic context;
- many offences of violence in a domestic context are dealt with in a magistrates' court as an offence of common assault or assault occasioning actual bodily harm because the injuries sustained are relatively minor. Offences involving serious violence will warrant a custodial sentence in the majority of cases;
- a number of aggravating factors may commonly arise by virtue of the offence being committed in a domestic context (see list below);
- since domestic violence takes place within the context of a current or past relationship, the history of the relationship will often be relevant in assessing the gravity of the offence. A court is entitled to take into account anything occurring within the relationship as a whole, which may reveal relevant aggravating or mitigating factors;
- in respect of an offence of violence in a domestic context, an offender's good character in relation to conduct outside the home should generally be of no relevance where there is a proven pattern of behaviour;
- assertions that the offence has been provoked by conduct of the victim need to be treated with great care, both in determining whether they have a factual basis and in considering whether the circumstances of the alleged conduct amounts to provocation sufficient to mitigate the seriousness of the offence;

- where the custody threshold is only just crossed, so that if a custodial sentence is imposed it will be a short sentence, the court will wish to consider whether the better option is a suspended sentence order or a community order, including in either case a requirement to attend an accredited domestic violence programme. Such an option will only be appropriate where the court is satisfied that the offender genuinely intends to reform his or her behaviour and that there is a real prospect of rehabilitation being successful. A pre-sentence report should be requested to assess the suitability of such an option.

Refer to paragraphs 4.1 to 4.4 of the SGC guideline for guidance regarding the relevance of the victim's wishes as to sentence.

#### Aggravating factors

3. The following aggravating factors may be of particular relevance to offences committed in a domestic context and should be read alongside the general factors set out on the pullout card:

##### *Factors indicating higher culpability:*

Abuse of trust and abuse of power;

Using contact arrangements with a child to instigate an offence;

Proven history of violence or threats by the offender in a domestic setting;

History of disobedience to court orders.

##### *Factors indicating a greater degree of harm:*

Victim is particularly vulnerable;

Impact on children.

## Hate crime

### Racial or religious aggravation – statutory provisions

1. Sections 29 to 32 of the Crime and Disorder Act 1998 create specific racially or religiously aggravated offences, which have higher maximum penalties than the non-aggravated versions of those offences. The individual offence guidelines indicate whether there is a specifically aggravated form of the offence.
2. An offence is racially or religiously aggravated for the purposes of sections 29-32 of the Act if the offender demonstrates hostility towards the victim based on his or her membership (or presumed membership) of a racial or religious group, or if the offence is racially or religiously motivated.
3. For all other offences, section 145 of the Criminal Justice Act 2003 provides that the court must regard racial or religious aggravation as an aggravating factor.
4. The court should not treat an offence as racially or religiously aggravated for the purposes of section 145 where a racially or religiously aggravated form of the offence was charged but resulted in an acquittal. The court should not normally treat an offence as racially or religiously aggravated if a racially or religiously aggravated form of the offence was available but was not charged. **Consult your legal adviser for further guidance in these situations.**

### Aggravation related to disability, sexual orientation or transgender identity – statutory provisions

5. Under section 146 of the Criminal Justice Act 2003, the court must treat as an aggravating factor the fact that:
  - an offender demonstrated hostility towards the victim based on his or her disability, sexual orientation or transgender identity (or presumed disability, sexual orientation or transgender identity); or
  - the offence was motivated by hostility towards persons who have a particular disability, who are of a particular sexual orientation or who are transgender.

### Approach to sentencing

6. A court should not conclude that offending involved aggravation related to race, religion, disability, sexual orientation or transgender identity without first putting the offender on notice and allowing him or her to challenge the allegation.
7. When sentencing any offence where such aggravation is found to be present, the following approach should be followed. This applies both to the specific racially or religiously aggravated offences under the Crime and Disorder Act 1998 and to offences which are regarded as aggravated under section 145 or 146 of the Criminal Justice Act 2003:
  - sentencers should first determine the appropriate sentence, leaving aside the element of aggravation related to race, religion, disability, sexual orientation or transgender identity but taking into account all other aggravating or mitigating factors;
  - the sentence should then be increased to take account of the aggravation related to race, religion, disability, sexual orientation or transgender identity;
  - the increase may mean that a more onerous penalty of the same type is appropriate, or that the threshold for a more severe type of sentence is passed;

- the sentencer must state in open court that the offence was aggravated by reason of race, religion, disability, sexual orientation or transgender identity;
  - the sentencer should state what the sentence would have been without that element of aggravation.
8. The extent to which the sentence is increased will depend on the seriousness of the aggravation. The following factors could be taken as indicating a high level of aggravation:

*Offender's intention*

- The element of aggravation based on race, religion, disability, sexual orientation or transgender identity was planned
- The offence was part of a pattern of offending by the offender
- The offender was a member of, or was associated with, a group promoting hostility based on race, religion, disability, sexual orientation or transgender identity
- The incident was deliberately set up to be offensive or humiliating to the victim or to the group of which the victim is a member

*Impact on the victim or others*

- The offence was committed in the victim's home
  - The victim was providing a service to the public
  - The timing or location of the offence was calculated to maximise the harm or distress it caused
  - The expressions of hostility were repeated or prolonged
  - The offence caused fear and distress throughout a local community or more widely
  - The offence caused particular distress to the victim and/or the victim's family.
9. At the lower end of the scale, the aggravation may be regarded as less serious if:
- It was limited in scope or duration;
  - The offence was not motivated by hostility on the basis of race, religion, disability, sexual orientation or transgender identity, and the element of hostility or abuse was minor or incidental.
10. In these guidelines, where the specific racially or religiously aggravated offences under the Crime and Disorder Act 1998 are addressed on the same page as the 'basic offence'; the starting points and ranges indicated on the guideline relate to the 'basic' (i.e. non-aggravated) offence. The increase for the element of racial or religious aggravation may result in a sentence above the range; **this will not constitute a departure from the guideline for which reasons must be given.**



## Road traffic offences - disqualification

### Obligatory disqualification

1. Some offences carry obligatory disqualification for a minimum of 12 months.<sup>54</sup> The minimum period is automatically increased where there have been certain previous convictions and disqualifications.
2. An offender must be disqualified for at least two years if he or she has been disqualified two or more times for a period of at least 56 days in the three years preceding the commission of the offence.<sup>55</sup> The following disqualifications are to be disregarded for the purposes of this provision:
  - interim disqualification;
  - disqualification where vehicle used for the purpose of crime;
  - disqualification for stealing or taking a vehicle or going equipped to steal or take a vehicle.
3. An offender must be disqualified for at least three years if he or she is convicted of one of the following offences and has within the ten years preceding the commission of the offence been convicted of any of these offences:<sup>56</sup>
  - causing death by careless driving when under the influence of drink or drugs;
  - driving or attempting to drive while unfit;
  - driving or attempting to drive with excess alcohol;
  - failing to provide a specimen (drive/attempting to drive).
4. The individual offence guidelines above indicate whether disqualification is mandatory for the offence and the applicable minimum period. **Consult your legal adviser for further guidance.**

### Special Reasons

5. The period of disqualification may be reduced or avoided if there are special reasons.<sup>57</sup> These must relate to the offence; circumstances peculiar to the offender cannot constitute special reasons.<sup>58</sup> The Court of Appeal has established that, to constitute a special reason, a matter must:<sup>59</sup>
  - be a mitigating or extenuating circumstance;
  - not amount in law to a defence to the charge;
  - be directly connected with the commission of the offence;
  - be one which the court ought properly to take into consideration when imposing sentence.

**Consult your legal adviser for further guidance on special reasons applications.**

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<sup>54</sup> Road Traffic Offenders Act 1988, s.34

<sup>55</sup> *ibid.*, s.34(4)

<sup>56</sup> *ibid.*, s.34(3)

<sup>57</sup> *ibid.*, s.34(1)

<sup>58</sup> *Whittal v Kirby* [1946] 2 All ER 552 (CA)

<sup>59</sup> *R v Wickens* (1958) 42 Cr App R 436 (CA)

## **'Totting up' disqualification**

6. Disqualification for a minimum of six months must be ordered if an offender incurs 12 penalty points or more within a three-year period.<sup>60</sup> The minimum period may be automatically increased if the offender has been disqualified within the preceding three years. Totting up disqualifications, unlike other disqualifications, erase all penalty points.
7. The period of a totting up disqualification may be reduced or avoided for exceptional hardship or other mitigating circumstances if the court thinks fit to do so. No account is to be taken of hardship that is not exceptional hardship or circumstances alleged to make the offence not serious. Any circumstances taken into account in the preceding three years to reduce or avoid a totting disqualification must be disregarded.<sup>61</sup>
8. **Consult your legal adviser for further guidance on exceptional hardship applications.**

## **Discretionary disqualification**

9. Whenever an offender is convicted of an endorsable offence or of taking a vehicle without consent, the court has a discretionary power to disqualify instead of imposing penalty points. The individual offence guidelines above indicate whether the offence is endorsable and the number or range of penalty points it carries.
10. The number of variable points or the period of disqualification should reflect the seriousness of the offence. Some of the individual offence guidelines above include penalty points and/or periods of disqualification in the sentence starting points and ranges; however, the court is not precluded from sentencing outside the range where the facts justify it. Where a disqualification is for less than 56 days, there are some differences in effect compared with disqualification for a longer period; in particular, the licence will automatically come back into effect at the end of the disqualification period (instead of requiring application by the driver) and the disqualification is not taken into account for the purpose of increasing subsequent obligatory periods of disqualification.<sup>62</sup>
11. In some cases in which the court is considering discretionary disqualification, the offender may already have sufficient penalty points on his or her licence that he or she would be liable to a 'totting up' disqualification if further points were imposed. In these circumstances, the court should impose penalty points rather than discretionary disqualification so that the minimum totting up disqualification period applies (see paragraph 6 above).

## **Disqualification until a test is passed**

12. Where an offender is convicted of dangerous driving, the court must order disqualification until an extended driving test is passed.
13. The court has discretion to disqualify until a test is passed where an offender is convicted of any endorsable offence.<sup>63</sup> Where disqualification is obligatory, the extended test applies. In other cases, it will be the ordinary test.
14. An offender disqualified as a 'totter' under the penalty points provisions may also be ordered to re-take a driving test; in this case, the extended test applies.
15. The discretion to order a re-test is likely to be exercised where there is evidence of inexperience, incompetence or infirmity, or the disqualification period is lengthy (that is, the offender is going to be 'off the road' for a considerable time).

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<sup>60</sup> Road Traffic Offenders Act 1988, s.35

<sup>61</sup> *ibid.*

<sup>62</sup> *ibid.* ss34(4), 35(2), 37(1A)

<sup>63</sup> *ibid.* s36(4)

## Reduced period of disqualification for completion of rehabilitation course

16. Where an offender is disqualified for 12 months or more in respect of an alcohol-related driving offence, the court may order that the period of disqualification will be reduced if the offender satisfactorily completes an approved rehabilitation course.<sup>64</sup>
17. Before offering an offender the opportunity to attend a course, the court must be satisfied that an approved course is available and must inform the offender of the effect of the order, the fees that the offender is required to pay, and when he or she must pay them.
18. The court should also explain that the offender may be required to satisfy the Secretary of State that he or she does not have a drink problem and is fit to drive before the offender's licence will be returned at the end of the disqualification period.<sup>65</sup>
19. In general, a court should consider offering the opportunity to attend a course to all offenders convicted of a relevant offence for the first time. The court should be willing to consider offering an offender the opportunity to attend a second course where it considers there are good reasons. It will not usually be appropriate to give an offender the opportunity to attend a third course.
20. The reduction must be at least three months but cannot be more than one quarter of the total period of disqualification:
  - a period of 12 months disqualification must be reduced to nine months;
  - in other cases, a reduction of one week should be made for every month of the disqualification so that, for example, a disqualification of 24 months will be reduced by 24 weeks.
21. When it makes the order, the court must specify a date for completion of the course which is at least two months before the end of the reduced period of disqualification.

## Disqualification in the offender's absence

22. When considering disqualification in absence the starting point should be that disqualification in absence should be imposed if there is no reason to believe the defendant is not aware of the proceedings, and after the statutory notice has been served pursuant to section 11(4) of the Magistrates' Courts Act 1980 where appropriate. Disqualification should not be imposed in absence where there is evidence that the defendant has an acceptable reason for not attending or where there are reasons to believe it would be contrary to the interests of justice to do so.

## New drivers

23. Drivers who incur six points or more during the two-year probationary period after passing the driving test will have their licence revoked automatically by the Secretary of State; they will be able to drive only after application for a provisional licence pending the passing of a further test.<sup>66</sup>
24. An offender liable for an endorsement which will cause the licence to be revoked under the new drivers' provisions may ask the court to disqualify rather than impose points. This will avoid the requirement to take a further test. Generally, this would be inappropriate since it would circumvent the clear intention of Parliament.

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<sup>64</sup> Road Traffic Offenders Act 1988 s.34A

<sup>65</sup> Road Traffic Act 1988

<sup>66</sup> Road Traffic (New Drivers) Act 1995

## **Extension period of disqualification from driving where a custodial sentence is also imposed**

25. Where a court imposes disqualification in addition to a custodial sentence or a detention and training order, the court must extend the disqualification period by one half of the custodial sentence or detention or training order to take into account the period the offender will spend in custody. This will avoid a driving ban expiring, or being significantly diminished, during the period the offender is in custody (s.35a Criminal Justice and Courts Act, 2015). Periods of time spent on remand or subject to an electronically monitored curfew do not apply.
26. Where a rehabilitation course is completed, any extension period is disregarded when reducing the ban.
27. For example where a court imposes a 6 month custodial sentence and a disqualification period of 12 months, the ban will be extended to 15 months. Where a rehabilitation course is completed, the reduction will remain at a maximum of 3 months.

## Out of Court Disposals

1. There are several alternatives to formal charges available to police and CPS when dealing with adults, including cannabis and khat warnings, penalty notices for disorder, community resolution, simple cautions and conditional cautions.

### Cannabis or khat warning

2. A cannabis or khat warning may be given where the offender is found in possession of a small amount of cannabis or khat consistent with personal use and the offender admits the elements of the offence. The drug is confiscated and a record of the warning will be made on local systems. The warning is not a conviction and should not be regarded as an aggravating factor when sentencing for subsequent offences.

### Simple caution

3. A simple caution may be issued where there is evidence that the offender has committed an offence, the offender admits to the offence, it is not in the public interest to prosecute and the offender agrees to being given the caution.
4. When sentencing an offender who has received a simple caution on a previous occasion:
  - the caution is not a previous conviction and, therefore, is not a statutory aggravating factor;
  - however, the caution will form part of the offender's criminal record and if the caution is recent and is relevant to the current offence it may be considered to be an aggravating factor.

### Conditional caution

5. **A conditional caution**<sup>67</sup> requires an offender to comply with conditions, as an alternative to prosecution. The conditions that can be attached must be rehabilitative, reparative and/or a financial penalty. (If the offender is a "relevant foreign offender" – that is someone without permission to enter or stay in the UK, conditions can be offered that have the object of effecting departure from and preventing return to the UK.) Before the caution can be given, the offender must admit the offence and consent to the conditions.
6. When sentencing an offender who has received a conditional caution in respect of an earlier offence:
  - a conditional caution is not a previous conviction and, therefore, is not a statutory aggravating factor;
  - however, if the conditional caution is recent and is relevant to the current offence it may be considered to be an aggravating factor;
  - the offender's response to the caution may properly influence the court's assessment of the offender's suitability for a particular sentence, so long as it remains within the limits established by the seriousness of the current offence.

### *Approach to sentencing for offence for which offender was cautioned but failed to comply with conditions*

7. If the offender fails, without reasonable cause, to comply with the conditional caution, he or she may be prosecuted for the original offence. When sentencing in such a case:
  - the offender's non-compliance with the conditional caution does not increase the seriousness of the original offence and must not be regarded as an aggravating factor;
  - the offender's non-compliance may be relevant to selection of the type of sentence. For example, it may indicate that it is inappropriate to include certain requirements as part of a community order. The circumstances of the offender's failure to satisfy the conditions, and any partial compliance, will be relevant to this assessment.

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<sup>67</sup> Criminal Justice Act 2003, s.22

## **Penalty notices – fixed penalty notices and penalty notices for disorder**

8. Penalty notices may be issued as an alternative to prosecution in respect of a range of offences. Unlike conditional cautions, an admission of guilt is not a prerequisite to issuing a penalty notice.
9. An offender who is issued with a penalty notice may nevertheless be prosecuted for the offence if he or she:
  - asks to be tried for the offence; or
  - fails to pay the penalty within the period stipulated in the notice and the prosecutor decides to proceed with charges.<sup>68</sup>
10. When sentencing in cases in which a penalty notice was available:
  - the fact that the offender did not take advantage of the penalty (whether that was by requesting a hearing or failing to pay within the specified timeframe) does not increase the seriousness of the offence and must not be regarded as an aggravating factor. The appropriate sentence must be determined in accordance with the sentencing principles set out above (including the amount of any fine, which must take an offender's financial circumstances into account), disregarding the availability of the penalty;
  - where a penalty notice could not be offered or taken up for reasons unconnected with the offence itself, such as administrative difficulties outside the control of the offender, the starting point should be a fine equivalent to the amount of the penalty and no order of costs should be imposed. The offender should not be disadvantaged by the unavailability of the penalty notice in these circumstances. A list of offences for which penalty notices are available, and the amount of the penalty, is set out in Annex B.
11. Where an offender has had previous penalty notice(s), the fact that an offender has previously been issued with a penalty notice does not increase the seriousness of the current offence and must not be regarded as an aggravating factor. It may, however, properly influence the court's assessment of the offender's suitability for a particular sentence, so long as it remains within the limits established by the seriousness of the current offence.

## **Community Resolution**

12. Community resolution is an informal non-statutory disposal used for dealing with less serious crime and anti-social behaviour where the offender accepts responsibility. The views of the victim (where there is one) are taken into account in reaching an informal agreement between the parties which can involve restorative justice techniques.
13. When sentencing an offender who has received a community resolution for an earlier offence:
  - A community resolution is not a conviction and is therefore not a statutory aggravating factor, but if recent and relevant to the offence it may be considered to be an aggravating factor.

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<sup>68</sup> In some cases of non-payment, the penalty is automatically registered and enforceable as a fine without need for recourse to the courts. This procedure applies to penalty notices for disorder and fixed penalty notices issued in respect of certain road traffic offences but not to fixed penalty notices issued for most other criminal offences.

## Victim personal statements

A victim personal statement (VPS) gives victims a formal opportunity to say how a crime has affected them. Where the victim has chosen to make such a statement, a court should consider and take it into account prior to passing sentence.

The Criminal Practice Directions<sup>1</sup> emphasise that:

- evidence of the effects of an offence on the victim must be in the form of a witness statement under section 9 of the Criminal Justice Act 1967 or an expert's report;
- the statement must be served on the defence prior to sentence;
- except where inferences can properly be drawn from the nature of or circumstances surrounding the offence, the court must not make assumptions unsupported by evidence about the effects of an offence on the victim;
- at the discretion of the court the VPS may also be read aloud in whole or in part or it may be summarised. If it is to be read aloud the court should also determine who should do so. In making these decisions the court should take into account the victim's preferences, and follow them unless there is a good reason not to do so (for example, inadmissible or potentially harmful content). Court hearings should not be adjourned solely to allow the victim to attend court to read the VPS;
- the court must pass what it judges to be the appropriate sentence having regard to the circumstances of the offence and the offender, taking into account, so far as the court considers it appropriate, the consequences to the victim;
- the opinions of the victim or the victim's close relatives as to what the sentence should be are not relevant.

See also the guidance on page 155 particularly with reference to the victim's views as to any compensation order that may be imposed.

## Prevalence and community impact statements

Taken from the Sentencing Guidelines Council's definitive guideline *Overarching Principles: Seriousness*.

The seriousness of an individual case should be judged on its own dimensions of harm and culpability rather than as part of a collective social harm.

However, there may be exceptional local circumstances that arise which may lead a court to decide that prevalence should influence sentencing levels. The pivotal issue in such cases will be the harm being caused to the community. It is essential that sentencers both have supporting evidence from an external source (for example a community impact statement compiled by the police) to justify claims that a particular crime is prevalent in their area and are satisfied that there is a compelling need to treat the offence more seriously than elsewhere. A community impact statement is a document providing information to the court about the impact of offences on the community.

The key factor in determining whether sentencing levels should be enhanced in response to prevalence will be the level of harm being caused in the locality. Enhanced sentences should be exceptional and in response to exceptional circumstances. Sentencers must sentence within the sentencing guidelines once the prevalence has been addressed.

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<sup>1</sup> <https://www.justice.gov.uk/courts/procedure-rules/criminal/rulesmenu>

## Annex A

The lists below identify offences covered in the MCSG for which particular ancillary orders are available. In all cases, consult your legal adviser regarding available orders and their specific requirements and effects.

### **Football banning orders – Football Spectators Act 1989, s.14A**

Available on conviction of a 'relevant offence', listed in schedule 1 of the Football Spectators Act 1989. These include:

- possession of alcohol or being drunk while entering/trying to enter ground – Sporting Events (Control of Alcohol etc) Act 1985, s.2;
- disorderly behaviour – Public Order Act 1986, s.5 – committed:
  - (a) during a period relevant to a football match (see below) at any premises while the offender was at, or was entering or leaving or trying to enter or leave, the premises;
  - (b) on a journey to or from a football match and the court makes a declaration that the offence related to football matches; or
  - (c) during a period relevant to a football match (see below) and the court makes a declaration that the offence related to that match;
- any offence involving the use or threat of violence towards another person committed:
  - (a) during a period relevant to a football match (see below) at any premises while the offender was at, or was entering or leaving or trying to enter or leave, the premises;
  - (b) on a journey to or from a football match and the court makes a declaration that the offence related to football matches; or
  - (c) during a period relevant to a football match (see below) and the court makes a declaration that the offence related to that match;
- any offence involving the use or threat of violence towards property committed:
  - (a) during a period relevant to a football match (see below) at any premises while the offender was at, or was entering or leaving or trying to enter or leave, the premises;
  - (b) on a journey to or from a football match and the court makes a declaration that the offence related to football matches; or
  - (c) during a period relevant to a football match (see below) and the court makes a declaration that the offence related to that match;
- any offence involving the use, carrying or possession of an offensive weapon or firearm committed:
  - (a) during a period relevant to a football match (see below) at any premises while the offender was at, or was entering or leaving or trying to enter or leave, the premises;
  - (b) on a journey to or from a football match and the court makes a declaration that the offence related to football matches; or
  - (c) during a period relevant to a football match (see below) and the court makes a declaration that the offence related to that match;
- drunk and disorderly – Criminal Justice Act 1967, s.91(1) – committed on a journey to or from a football match and the court makes a declaration that the offence related to football matches;
- driving/attempting to drive when unfit through drink or drugs – Road Traffic Act 1988, s.4 – committed on a journey to or from a football match and the court makes a declaration that the



offence related to football matches;

- in charge of a vehicle when unfit through drink or drugs – Road Traffic Act 1988, s.4 – committed on a journey to or from a football match and the court makes a declaration that the offence related to football matches;
- driving/attempting to drive with excess alcohol – Road Traffic Act 1988, s.5 – committed on a journey to or from a football match and the court makes a declaration that the offence related to football matches;
- in charge of a vehicle with excess alcohol – Road Traffic Act 1988, s.5 – committed on a journey to or from a football match and the court makes a declaration that the offence related to football matches;
- any offence under the Football (Offences) Act 1991;
- unauthorised sale of tickets – Criminal Justice and Public Order Act 1994, s.166.

The following periods are 'relevant' to a football match<sup>1</sup>:

(a) the period beginning:

- i. 24 hours before the start of the match; or
- ii. 24 hours before the time at which it is advertised to start;

which ever is the earliest, and ending 24 hours after the end of the match;

(b) where a match advertised to start at a particular time on a particular day is postponed to a later day, or does not take place, the period in the advertised day beginning 24 hours before and ending 24 hours after that time.

### **Forfeiture or suspension of personal liquor licence – Licensing Act 2003, s.129**

Available on conviction of a 'relevant offence', listed in schedule 4 of the Licensing Act 2003. These include:

- an offence under the Licensing Act 2003;
- an offence under the Firearms Act 1968;
- theft – Theft Act 1968, s.1;
- burglary – Theft Act 1968, s.9;
- abstracting electricity – Theft Act 1968, s.13;
- handling stolen goods – Theft Act 1968, s.22;
- going equipped for theft – Theft Act 1968, s.25;
- production of a controlled drug – Misuse of Drugs Act 1971, s.4(2);
- supply of a controlled drug – Misuse of Drugs Act 1971, s.4(3);

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<sup>1</sup> Football Spectators Act 1989, Sch.1 para.4.

- possession of a controlled drug with intent to supply – Misuse of Drugs Act 1971, s.5(3);
- evasion of duty – Customs and Excise Management Act 1979, s.170 (excluding s.170(1)(a));
- driving/attempting to drive when unfit through drink or drugs – Road Traffic Act 1988, s.4;
- in charge of a vehicle when unfit through drink or drugs – Road Traffic Act 1988, s.4;
- driving/attempting to drive with excess alcohol – Road Traffic Act 1988, s.5;
- in charge of a vehicle with excess alcohol – Road Traffic Act 1988, s.5;
- unauthorised use of trade mark where the goods in question are or include alcohol – Trade Marks Act 1994, ss.92(1) and 92(2);
- sexual assault – Sexual Offences Act 2003, s.3;
- exploitation of prostitution – Sexual Offences Act 2003, ss.52 and 53;
- exposure – Sexual Offences Act 2003, s.66;
- voyeurism – Sexual Offences Act 2003, s.67;
- a violent offence, being any offence which leads, or is intended or likely to lead, to death or to physical injury.

### **Sexual Harm Prevention Orders**

Available in respect of an offence listed in schedule 3<sup>2</sup> or 5 of the Sexual Offences Act 2003. These include:

- possession of indecent photograph of a child - Criminal Justice Act 1988, s.160;
- sexual assault – Sexual Offences Act 2003, s.3;
- exposure – Sexual Offences Act 2003, s.66;
- voyeurism – Sexual Offences Act 2003, s.67;
- threats to kill – Offences against the Person Act 1861, s.16;
- wounding/causing grievous bodily harm – Offences against the Person Act 1861, s.20;
- assault with intent to resist arrest – Offences against the Person Act 1861, s.38;
- assault occasioning actual bodily harm – Offences against the Person Act 1861, s.47;
- burglary with intent to inflict grievous bodily harm or to do unlawful damage to a building/anything within it – Theft Act 1968, s.9;

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<sup>2</sup> Sexual Offences Act s106(14) provides that any conditions in Sch. 3 relating to the age of the offender or the victim, or the sentence imposed on the offender may be disregarded in making a Sexual Offences Prevention Order and Sexual Offences Act s103B (9) contains the same provision in respect of Sexual Harm Prevention Orders

- arson – Criminal Damage Act 1971, s.1;
- violent disorder – Public Order Act 1986, s.2;
- affray – Public Order Act 1986, s.3;
- harassment – conduct causing fear of violence – Protection from Harassment Act 1994, s.4;
- racially or religiously aggravated wounding/causing grievous bodily harm – Crime and Disorder Act 1998, s.29;
- racially or religiously aggravated assault occasioning actual bodily harm – Crime and Disorder Act 1998, s.29;
- racially or religiously aggravated common assault – Crime and Disorder Act 1998, s.29;
- racially or religiously aggravated threatening behaviour – Crime and Disorder Act 1998, s.31(1)(a);
- racially or religiously aggravated disorderly behaviour with intent to cause harassment, alarm or distress – Crime and Disorder Act 1998, s.31(1)(b);
- exploitation of prostitution – Sexual Offences Act 2003, ss.52 and 53.

**Annex B****Penalty notices for disorder**

Offence	Legislation	Amount
Criminal damage (where damage under £500 in value, and not normally where damage over £300)	Criminal Damage Act 1971, s.1	£90
Disorderly behaviour	Public Order Act 1986, s.5	£90
Drunk and disorderly	Criminal Justice Act 1967, s.91	£90
Sale of alcohol to drunk person on relevant premises (not including off-licenses)	Licensing Act 2003, s.141	£90
Sale of alcohol to person under 18 (staff only; licensees should be subject of a summons)	Licensing Act 2003, s.146	£90
Theft from a shop (where goods under £200 in value, and not normally where goods over £100)	Theft Act 1968, s.1	£90

**Fixed penalty notices**

Offence	Legislation	Amount	Penalty points
Careless driving	Road Traffic Act 1988, s.3	£100	3
Brakes, steering or tyres defective	Road Traffic Act 1988, s.41A	£200	3
Breach of other construction and use requirements	Road Traffic Act 1988, s.42	£100 or £200	3
Driving other than in accordance with licence	Road Traffic Act 1988, s.87(1)	£100	3
Failing to comply with police officer signal	Road Traffic Act 1988, s.35	£100	3
Failing to comply with traffic sign	Road Traffic Act 1988, s.36	£100	3
Failing to supply details of driver's identity	Road Traffic Act 1988, s.172	£200	6
No insurance	Road Traffic Act 1988, s.143	£300	6
No test certificate	Road Traffic Act 1988, s.47	£100	–
Overloading/exceeding axle weight	Road Traffic Act 1988, s.41B	£100 to £300	–
Pelican/zebra crossing contravention	Road Traffic Regulation Act 1984, s.25(5)	£100	3
Railway fare evasion (where penalty notice scheme in operation by train operator)	Railways (Penalty Fares) Regulations 1994	£20 or twice the full single fare to next stop, whichever is greater	–
Seat belt offences	Road Traffic Act 1988, s.14 and s15(2) or 15(4)	£100	–
School non-attendance	Education Act 1996, s.444(1)	£60 if paid within 21 days; £120 if paid within 28 days	–
Speeding	Road Traffic Regulation Act 1984, s.89(1)	£100	3
Using hand-held mobile phone while driving	Road Traffic Act 1988, s.41D	£100	3
Using vehicle in dangerous condition	Road Traffic Act 1988, s.40A	£100	3

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# Inflicting grievous bodily harm/ Unlawful wounding

Offences against the Person Act 1861 (section 20)

# Racially/religiously aggravated GBH/Unlawful wounding

Crime and Disorder Act 1998 (section 29)

These are specified offences for the purposes of section 224 of the  
Criminal Justice Act 2003

Triable either way

## Section 20

Maximum when tried summarily: Level 5 fine and/or 26 weeks' custody

Maximum when tried on indictment: 5 years' custody

## Section 29

Maximum when tried summarily: Level 5 fine and/or 26 weeks' custody

Maximum when tried on indictment: 7 years' custody

**Offence range: Community order – 4 years' custody**

This guideline applies to all offenders aged 18 and older, who are sentenced on or after 13 June 2011. The definitions at page 145 of 'starting point' and 'first time offender' do not apply for this guideline. Starting point and category ranges apply to all offenders in all cases, irrespective of plea or previous convictions.

## STEP ONE

### Determining the offence category

The court should determine the offence category using the table below.

<b>Category 1</b>	Greater harm (serious injury must normally be present) <b>and</b> higher culpability
<b>Category 2</b>	Greater harm (serious injury must normally be present) <b>and</b> lower culpability; or lesser harm <b>and</b> higher culpability
<b>Category 3</b>	Lesser harm <b>and</b> lower culpability

The court should determine the offender's culpability and the harm caused, or intended, by reference **only** to the factors below (as demonstrated by the presence of one or more). These factors comprise the principal factual elements of the offence and should determine the category.

<p><b>Factors indicating greater harm</b></p> <p>Injury (which includes disease transmission and/or psychological harm) which is serious in the context of the offence (must normally be present)</p> <p>Victim is particularly vulnerable because of personal circumstances</p> <p>Sustained or repeated assault on the same victim</p>	<p>Use of weapon or weapon equivalent (for example, shod foot, headbutting, use of acid, use of animal)</p> <p>Intention to commit more serious harm than actually resulted from the offence</p> <p>Deliberately causes more harm than is necessary for commission of offence</p> <p>Deliberate targeting of vulnerable victim</p>
<p><b>Factors indicating lesser harm</b></p> <p>Injury which is less serious in the context of the offence</p>	<p>Leading role in group or gang</p> <p>Offence motivated by, or demonstrating, hostility based on the victim's age, sex, gender identity (or presumed gender identity)</p>
<p><b>Factors indicating higher culpability</b></p> <p><i>Statutory aggravating factors:</i></p> <p>Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)</p> <p>Offence motivated by, or demonstrating, hostility to the victim based on the victim's disability (or presumed disability)</p> <p><i>Other aggravating factors:</i></p> <p>A significant degree of premeditation</p>	<p><b>Factors indicating lower culpability</b></p> <p>Subordinate role in a group or gang</p> <p>A greater degree of provocation than normally expected</p> <p>Lack of premeditation</p> <p>Mental disorder or learning disability, where linked to commission of the offence</p> <p>Excessive self defence</p>

## STEP TWO

### Starting point and category range

Having determined the category, the court should use the corresponding starting points 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 in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

Offence Category	Starting Point ( <i>Applicable to all offenders</i> )	Category Range ( <i>Applicable to all offenders</i> )
<b>Category 1</b>	3 years' custody	2 years 6 months' – 4 years' custody
<b>Category 2</b>	1 year 6 months' custody	1 – 3 years' custody
<b>Category 3</b>	High level community order	Low level community order – 51 weeks' custody

The table below 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 starting point. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

When sentencing **category 3** offences, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

Factors increasing seriousness	Factors reducing seriousness or reflecting personal mitigation
<i>Statutory aggravating factors:</i>	No previous convictions <b>or</b> no relevant/recent convictions
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	Single blow
Offence committed whilst on bail	Remorse
<i>Other aggravating factors include:</i>	Good character and/or exemplary conduct
Location of the offence	Determination and/or demonstration of steps taken to address addiction or offending behaviour
Timing of the offence	Serious medical conditions requiring urgent, intensive or long-term treatment
Ongoing effect upon the victim	Isolated incident
Offence committed against those working in the public sector or providing a service to the public	Age and/or lack of maturity where it affects the responsibility of the offender
Presence of others including relatives, especially children or partner of the victim	Lapse of time since the offence where this is not the fault of the offender
Gratuitous degradation of victim	Mental disorder or learning disability, where <b>not</b> linked to the commission of the offence
In domestic violence cases, victim forced to leave their home	Sole or primary carer for dependent relatives
Failure to comply with current court orders	
Offence committed whilst on licence	
An attempt to conceal or dispose of evidence	
Failure to respond to warnings or concerns expressed by others about the offender's behaviour	
Commission of offence whilst under the influence of alcohol or drugs	
Abuse of power and/or position of trust	
Exploiting contact arrangements with a child to commit an offence	
Established evidence of community impact	
Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution	
Offences taken into consideration (TICs)	

**Section 29 offences only:** The court should determine the appropriate sentence for the offence without taking account of the element of aggravation and then make an addition to the sentence, considering the level of aggravation involved. It may be appropriate to move outside the identified category range, taking into account the increased statutory maximum.



### **STEP THREE**

#### **Consider any other factors which indicate a reduction, such as assistance to the prosecution**

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

### **STEP FIVE**

#### **Dangerousness**

Inflicting grievous bodily harm/Unlawful wounding and racially/religiously aggravated GBH/Unlawful wounding are specified offences within the meaning of Chapter 5 of the Criminal Justice Act 2003 and at this stage the court should consider whether having regard to the criteria contained in that Chapter it would be appropriate to award an extended sentence.

### **STEP SIX**

#### **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 offending behaviour.

### **STEP SEVEN**

#### **Compensation and ancillary orders**

In all cases, the court should consider whether to make compensation and/or other ancillary orders.

### **STEP EIGHT**

#### **Reasons**

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

### **STEP NINE**

#### **Consideration for remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

# Assault occasioning actual bodily harm

Offences against the Person Act 1861 (section 47)

# Racially/religiously aggravated ABH

Crime and Disorder Act 1998 (section 29)

These are specified offences for the purposes of section 224 of the Criminal Justice Act 2003

**Triable either way**

## **Section 47**

Maximum when tried summarily: Level 5 fine and/or 26 weeks' custody

Maximum when tried on indictment: 5 years' custody

## **Section 29**

Maximum when tried summarily: Level 5 fine and/or 26 weeks' custody

Maximum when tried on indictment: 7 years' custody

**Offence range: Fine – 3 years' custody**

This guideline applies to all offenders aged 18 and older, who are sentenced on or after 13 June 2011. The definitions at page 145 of 'starting point' and 'first time offender' do not apply for this guideline. Starting point and category ranges apply to all offenders in all cases, irrespective of plea or previous convictions.

## STEP ONE

### Determining the offence category

The court should determine the offence category using the table below.

<b>Category 1</b>	Greater harm (serious injury must normally be present) <b>and</b> higher culpability
<b>Category 2</b>	Greater harm (serious injury must normally be present) <b>and</b> lower culpability; or lesser harm <b>and</b> higher culpability
<b>Category 3</b>	Lesser harm <b>and</b> lower culpability

The court should determine the offender's culpability and the harm caused, or intended, by reference **only** to the factors identified in the table below (as demonstrated by the presence of one or more). These factors comprise the principal factual elements of the offence and should determine the category.

<b>Factors indicating greater harm</b>	Use of weapon or weapon equivalent (for example, shod foot, headbutting, use of acid, use of animal)
Injury (which includes disease transmission and/or psychological harm) which is serious in the context of the offence (must normally be present)	Intention to commit more serious harm than actually resulted from the offence
Victim is particularly vulnerable because of personal circumstances	Deliberately causes more harm than is necessary for commission of offence
Sustained or repeated assault on the same victim	Deliberate targeting of vulnerable victim
<b>Factors indicating lesser harm</b>	Leading role in group or gang
Injury which is less serious in the context of the offence	Offence motivated by, or demonstrating, hostility based on the victim's age, sex, gender identity (or presumed gender identity)
<b>Factors indicating higher culpability</b>	<b>Factors indicating lower culpability</b>
<i>Statutory aggravating factors:</i>	Subordinate role in group or gang
Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)	A greater degree of provocation than normally expected
Offence motivated by, or demonstrating, hostility to the victim based on the victim's disability (or presumed disability)	Lack of premeditation
<i>Other aggravating factors:</i>	Mental disorder or learning disability, where linked to commission of the offence
A significant degree of premeditation	Excessive self defence

## STEP TWO

### Starting point and category range

Having determined the category, the court should use the corresponding starting points 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 in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

<b>Offence Category</b>	<b>Starting Point</b> ( <i>Applicable to all offenders</i> )	<b>Category Range</b> ( <i>Applicable to all offenders</i> )
<b>Category 1</b>	1 year 6 months' custody	1 year – 3 years' custody
<b>Category 2</b>	26 weeks' custody	Low level community order – 51 weeks' custody
<b>Category 3</b>	Medium level community order	Band A fine – High level community order

The table below 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 starting point. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

When sentencing **category 2** offences, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

When sentencing **category 3** offences, the court should also consider the community order threshold as follows:

- has the community order threshold been passed?

Factors increasing seriousness		
<i>Statutory aggravating factors:</i>		
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	Exploiting contact arrangements with a child to commit an offence	
Offence committed whilst on bail	Established evidence of community impact	
<i>Other aggravating factors include:</i>		
Location of the offence	Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution	
Timing of the offence	Offences taken into consideration (TICs)	
Ongoing effect upon the victim	Factors reducing seriousness or reflecting personal mitigation	
Offence committed against those working in the public sector or providing a service to the public	No previous convictions <b>or</b> no relevant/recent convictions	
Presence of others including relatives, especially children or partner of the victim	Single blow	
Gratuitous degradation of victim	Remorse	
In domestic violence cases, victim forced to leave their home	Good character and/or exemplary conduct	
Failure to comply with current court orders	Determination and/or demonstration of steps taken to address addiction or offending behaviour	
Offence committed whilst on licence	Serious medical conditions requiring urgent, intensive or long-term treatment	
An attempt to conceal or dispose of evidence	Isolated incident	
Failure to respond to warnings or concerns expressed by others about the offender's behaviour	Age and/or lack of maturity where it affects the responsibility of the offender	
Commission of offence whilst under the influence of alcohol or drugs	Lapse of time since the offence where this is not the fault of the offender	
Abuse of power and/or position of trust	Mental disorder or learning disability, where <b>not</b> linked to the commission of the offence	
	Sole or primary carer for dependent relatives	

**Section 29 offences only:** The court should determine the appropriate sentence for the offence without taking account of the element of aggravation and then make an addition to the sentence, considering the level of aggravation involved. It may be appropriate to move outside the identified category range, taking into account the increased statutory maximum.

### **STEP THREE**

#### **Consider any other factors which indicate a reduction, such as assistance to the prosecution**

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

### **STEP FIVE**

#### **Dangerousness**

Assault occasioning actual bodily harm and racially/religiously aggravated ABH are specified offences within the meaning of Chapter 5 of the Criminal Justice Act 2003 and at this stage the court should consider whether having regard to the criteria contained in that Chapter it would be appropriate to award an extended sentence.

### **STEP SIX**

#### **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 offending behaviour.

### **STEP SEVEN**

#### **Compensation and ancillary orders**

In all cases, the court should consider whether to make compensation and/or other ancillary orders.

### **STEP EIGHT**

#### **Reasons**

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

### **STEP NINE**

#### **Consideration for remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

# Assault with intent to resist arrest

## Offences against the Person Act 1861 (section 38)

**This is a specified offence for the purposes of section 224 of the Criminal Justice Act 2003**

### **Triable either way**

Maximum when tried summarily: Level 5 fine and/or 26 weeks' custody

Maximum when tried on indictment: 2 years' custody

### **Offence range: Fine – 51 weeks' custody**

This guideline applies to all offenders aged 18 and older, who are sentenced on or after 13 June 2011. The definitions at page 145 of 'starting point' and 'first time offender' do not apply for this guideline. Starting point and category ranges apply to all offenders in all cases, irrespective of plea or previous convictions.

## STEP ONE

### Determining the offence category

The court should determine the offence category using the table below.

<b>Category 1</b>	Greater harm <b>and</b> higher culpability
<b>Category 2</b>	Greater harm <b>and</b> lower culpability; <b>or</b> lesser harm <b>and</b> higher culpability
<b>Category 3</b>	Lesser harm <b>and</b> lower culpability

The court should determine the offender's culpability and the harm caused, or intended, by reference **only** to the factors identified in the table below (as demonstrated by the presence of one or more). These factors comprise the principal factual elements of the offence and should determine the category.

#### Factors indicating greater harm

Sustained or repeated assault on the same victim

#### Factors indicating lesser harm

Injury which is less serious in the context of the offence

#### Factors indicating higher culpability

##### *Statutory aggravating factors:*

Offence racially or religiously aggravated

Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)

Offence motivated by, or demonstrating, hostility to the victim based on the victim's disability (or presumed disability)

##### *Other aggravating factors:*

A significant degree of premeditation

Use of weapon or weapon equivalent (for example, shod foot, headbutting, use of acid, use of animal)

Intention to commit more serious harm than actually resulted from the offence

Deliberately causes more harm than is necessary for commission of offence

Leading role in group or gang

Offence motivated by, or demonstrating, hostility based on the victim's age, sex, gender identity (or presumed gender identity)

#### Factors indicating lower culpability

Subordinate role in group or gang

Lack of premeditation

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

## STEP TWO

### Starting point and category range

Having determined the category, the court should use the corresponding starting points 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 in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

Offence Category	Starting Point ( <i>Applicable to all offenders</i> )	Category Range ( <i>Applicable to all offenders</i> )
Category 1	26 weeks' custody	12 weeks' custody – 51 weeks' custody
Category 2	Medium level community order	Low level community order – High level community order
Category 3	Band B fine	Band A fine – Band C fine

The table below 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 starting point. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

When sentencing **category 1** offences, the court should consider whether the sentence can be suspended.

#### 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 include:*

Location of the offence

Timing of the offence

Ongoing effect upon the victim

Gratuitous degradation of victim

Failure to comply with current court orders

Offence committed whilst on licence

An attempt to conceal or dispose of evidence

Failure to respond to warnings or concerns expressed by others about the offender's behaviour

Commission of offence whilst under the influence of alcohol or drugs

Established evidence of community impact

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Offences taken into consideration (TICs)

#### Factors reducing seriousness or reflecting personal mitigation

No previous convictions or no relevant/recent convictions

Single blow

Remorse

Good character and/or exemplary conduct

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

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

Isolated incident

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

Mental disorder or learning disability, where **not** linked to the commission of the offence

Sole or primary carer for dependent relatives



### **STEP THREE**

#### **Consider any other factors which indicate a reduction, such as assistance to the prosecution**

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

### **STEP FIVE**

#### **Dangerousness**

Assault with intent to resist arrest is a specified offence within the meaning of Chapter 5 of the Criminal Justice Act 2003 and at this stage the court should consider whether having regard to the criteria contained in that Chapter it would be appropriate to award an extended sentence.

### **STEP SIX**

#### **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 offending behaviour.

### **STEP SEVEN**

#### **Compensation and ancillary orders**

In all cases, the court should consider whether to make compensation and/or other ancillary orders.

### **STEP EIGHT**

#### **Reasons**

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

### **STEP NINE**

#### **Consideration for remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

# Assault on a police constable in execution of his duty

Police Act 1996 (section 89)

## **Triable only summarily**

Maximum: Level 5 fine and/or 26 weeks' custody

## **Offence range: Fine – 26 weeks' custody**

This guideline applies to all offenders aged 18 and older, who are sentenced on or after 13 June 2011. The definitions at page 145 of 'starting point' and 'first time offender' do not apply for this guideline. Starting point and category ranges apply to all offenders in all cases, irrespective of plea or previous convictions.

## STEP ONE

### Determining the offence category

The court should determine the offence category using the table below.

<b>Category 1</b>	Greater harm <b>and</b> higher culpability
<b>Category 2</b>	Greater harm <b>and</b> lower culpability; <b>or</b> lesser harm <b>and</b> higher culpability
<b>Category 3</b>	Lesser harm <b>and</b> lower culpability

The court should determine the offender's culpability and the harm caused, or intended, by reference **only** to the factors below (as demonstrated by the presence of one or more). These factors comprise the principal factual elements of the offence and should determine the category.

#### Factors indicating greater harm

Sustained or repeated assault on the same victim

#### Factors indicating lesser harm

Injury which is less serious in the context of the offence

#### Factors indicating higher culpability

##### *Statutory aggravating factors:*

Offence racially or religiously aggravated

Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)

Offence motivated by, or demonstrating, hostility to the victim based on the victim's disability (or presumed disability)

##### *Other aggravating factors:*

A significant degree of premeditation

Use of weapon or weapon equivalent (for example, shod foot, headbutting, use of acid, use of animal)

Intention to commit more serious harm than actually resulted from the offence

Deliberately causes more harm than is necessary for commission of offence

Leading role in group or gang

Offence motivated by, or demonstrating, hostility based on the victim's age, sex, gender identity (or presumed gender identity)

#### Factors indicating lower culpability

Subordinate role in group or gang

Lack of premeditation

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

## STEP TWO

### Starting point and category range

Having determined the category, the court should use the corresponding starting points 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 in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

Offence Category	Starting Point <i>(Applicable to all offenders)</i>	Category Range <i>(Applicable to all offenders)</i>
Category 1	12 weeks' custody	Low level community order – 26 weeks' custody
Category 2	Medium level community order	Low level community order – High level community order
Category 3	Band B fine	Band A fine – Band C fine

The table below 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 starting point. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

When sentencing **category 1** offences, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

#### 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 include:*

Location of the offence

Timing of the offence

Ongoing effect upon the victim

Gratuitous degradation of victim

Failure to comply with current court orders

Offence committed whilst on licence

An attempt to conceal or dispose of evidence

Failure to respond to warnings or concerns expressed by others about the offender's behaviour

Commission of offence whilst under the influence of alcohol or drugs

Established evidence of community impact

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Offences taken into consideration (TICs)

#### Factors reducing seriousness or reflecting personal mitigation

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

Single blow

Remorse

Good character and/or exemplary conduct

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

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

Isolated incident

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

Lapse of time since the offence where this is not the fault of the offender

Mental disorder or learning disability, where **not** linked to the commission of the offence

Sole or primary carer for dependent relatives

### **STEP THREE**

#### **Consider any other factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account any 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 potential 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**

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 offending behaviour.

### **STEP SIX**

#### **Compensation and ancillary orders**

In all cases, courts should consider whether to make compensation and/or other 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 remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

# Common Assault

Criminal Justice Act 1988 (section 39)

# Racially/religiously aggravated common assault

Crime and Disorder Act 1998 (section 29)

**Racially/religiously aggravated assault is a specified offence for the purposes of section 224 of the Criminal Justice Act 2003**

## **Section 39**

**Triable only summarily**

Maximum when tried summarily: Level 5 fine and/or 26 weeks' custody

## **Section 29**

**Triable either way**

Maximum when tried summarily: Level 5 fine and/or 26 weeks' custody

Maximum when tried on indictment: 2 years' custody

**Offence range: Discharge – 26 weeks' custody**

This guideline applies to all offenders aged 18 and older, who are sentenced on or after 13 June 2011. The definitions at page 145 of 'starting point' and 'first time offender' do not apply for this guideline. Starting point and category ranges apply to all offenders in all cases, irrespective of plea or previous convictions.

## STEP ONE

### Determining the offence category

The court should determine the offence category using the table below.

<b>Category 1</b>	Greater harm (injury or fear of injury must normally be present) <b>and</b> higher culpability
<b>Category 2</b>	Greater harm (injury or fear of injury must normally be present) <b>and</b> lower culpability; <b>or</b> lesser harm and higher culpability
<b>Category 3</b>	Lesser harm <b>and</b> lower culpability

The court should determine the offender's culpability and the harm caused, or intended, by reference **only** to the factors below (as demonstrated by the presence of one or more). These factors comprise the principal factual elements of the offence and should determine the category.

<b>Factors indicating greater harm</b>	Threatened or actual use of weapon or weapon equivalent (for example, shod foot, headbutting, use of acid, use of animal)
Injury or fear of injury which is serious in the context of the offence (must normally be present)	Intention to commit more serious harm than actually resulted from the offence
Victim is particularly vulnerable because of personal circumstances	Deliberately causes more harm than is necessary for commission of offence
Sustained or repeated assault on the same victim	Deliberate targeting of vulnerable victim
<b>Factors indicating lesser harm</b>	Leading role in group or gang
Injury which is less serious in the context of the offence	Offence motivated by, or demonstrating, hostility based on the victim's age, sex, gender identity (or presumed gender identity)
<b>Factors indicating higher culpability</b>	<b>Factors indicating lower culpability</b>
<i>Statutory aggravating factors:</i>	Subordinate role in group or gang
Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)	A greater degree of provocation than normally expected
Offence motivated by, or demonstrating, hostility to the victim based on the victim's disability (or presumed disability)	Lack of premeditation
<i>Other aggravating factors:</i>	Mental disorder or learning disability, where linked to commission of the offence
A significant degree of premeditation	Excessive self defence

## STEP TWO

### Starting point and category range

Having determined the category, the court should use the corresponding starting points 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 in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

<b>Offence Category</b>	<b>Starting Point</b> ( <i>Applicable to all offenders</i> )	<b>Category Range</b> ( <i>Applicable to all offenders</i> )
<b>Category 1</b>	High level community order	Low level community order – 26 weeks' custody
<b>Category 2</b>	Medium level community order	Band A fine – High level community order
<b>Category 3</b>	Band A fine	Discharge – Band C fine

The table below 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 starting point. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

When sentencing **category 1** offences, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

When sentencing **category 2** offences, the court should also consider the community order threshold as follows:

- has the community order threshold been passed?

Factors increasing seriousness		
<i>Statutory aggravating factors:</i>		
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	Exploiting contact arrangements with a child to commit an offence	
Offence committed whilst on bail	Established evidence of community impact	
<i>Other aggravating factors include:</i>	Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution	
Location of the offence	Offences taken into consideration (TICs)	
Timing of the offence	Factors reducing seriousness or reflecting personal mitigation	
Ongoing effect upon the victim	No previous convictions <b>or</b> no relevant/recent convictions	
Offence committed against those working in the public sector or providing a service to the public	Single blow	
Presence of others including relatives, especially children or partner of the victim	Remorse	
Gratuitous degradation of victim	Good character and/or exemplary conduct	
In domestic violence cases, victim forced to leave their home	Determination and/or demonstration of steps taken to address addiction or offending behaviour	
Failure to comply with current court orders	Serious medical conditions requiring urgent, intensive or long-term treatment	
Offence committed whilst on licence	Isolated incident	
An attempt to conceal or dispose of evidence	Age and/or lack of maturity where it affects the responsibility of the offender	
Failure to respond to warnings or concerns expressed by others about the offender's behaviour	Lapse of time since the offence where this is not the fault of the offender	
Commission of offence whilst under the influence of alcohol or drugs	Mental disorder or learning disability, where <b>not</b> linked to the commission of the offence	
Abuse of power and/or position of trust	Sole or primary carer for dependent relatives	

**Section 29 offences only:** The court should determine the appropriate sentence for the offence without taking account of the element of aggravation and then make an addition to the sentence, considering the level of aggravation involved. It may be appropriate to move outside the identified category range, taking into account the increased statutory maximum.



### **STEP THREE**

#### **Consider any other factors which indicate a reduction, such as assistance to the prosecution**

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

### **STEP FIVE**

#### **Dangerousness**

Racially/religiously aggravated common assault is a specified offence within the meaning of Chapter 5 of the Criminal Justice Act 2003 and at this stage the court should consider whether having regard to the criteria contained in that Chapter it would be appropriate to award an extended sentence.

### **STEP SIX**

#### **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 offending behaviour.

### **STEP SEVEN**

#### **Compensation and ancillary orders**

In all cases, the court should consider whether to make compensation and/or other ancillary orders.

### **STEP EIGHT**

#### **Reasons**

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

### **STEP NINE**

#### **Consideration for remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

# Domestic burglary

## Theft Act 1968 (section 9)

**This is a serious specified offence for the purposes of section 224 Criminal Justice Act 2003 if it was committed with intent to:**

- (a) inflict grievous bodily harm on a person, or**
- (b) do unlawful damage to a building or anything in it.**

**Triable either way**

**Maximum when tried summarily: Level 5 fine and/or 26 weeks' custody**

**Maximum when tried on indictment: 14 years' custody**

**Offence range: Community order – 6 years' custody**

**Where sentencing an offender for a qualifying third domestic burglary, the Court must apply Section 111 of the Powers of the Criminal Courts (Sentencing) Act 2000 and impose a custodial term of at least three years, unless it is satisfied that there are particular circumstances which relate to any of the offences or to the offender which would make it unjust to do so.**

This guideline applies to all offenders aged 18 and older, who are sentenced on or after 16 January 2012. The definitions at page 145 of 'starting point' and 'first time offender' do not apply for this guideline. Starting point and category ranges apply to all offenders in all cases, irrespective of plea or previous convictions.

## STEP ONE

### Determining the offence category

The court should determine the offence category using the table below.

<b>Category 1</b>	Greater harm <b>and</b> higher culpability
<b>Category 2</b>	Greater harm <b>and</b> lower culpability <b>or</b> lesser harm <b>and</b> higher culpability
<b>Category 3</b>	Lesser harm <b>and</b> lower culpability

The court should determine culpability and harm caused or intended, by reference **only** to the factors below, which comprise the principal factual elements of the offence. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting before making an overall assessment and determining the appropriate offence category.

Factors indicating greater harm	Factors indicating higher culpability
Theft of/damage to property causing a significant degree of loss to the victim (whether economic, sentimental or personal value)	Victim or premises deliberately targeted (for example, due to vulnerability or hostility based on disability, race, sexual orientation)
Soiling, ransacking or vandalism of property	A significant degree of planning or organisation
Occupier at home (or returns home) while offender present	Knife or other weapon carried (where not charged separately)
Trauma to the victim, beyond the normal inevitable consequence of intrusion and theft	Equipped for burglary (for example, implements carried and/or use of vehicle)
Violence used or threatened against victim	Member of a group or gang
Context of general public disorder	<b>Factors indicating lower culpability</b>
<b>Factors indicating lesser harm</b>	Offence committed on impulse, with limited intrusion into property
Nothing stolen or only property of very low value to the victim (whether economic, sentimental or personal)	Offender exploited by others
Limited damage or disturbance to property	Mental disorder or learning disability, where linked to the commission of the offence

## STEP TWO

### Starting point and category range

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions.

Where the defendant is dependant on or has a propensity to misuse drugs and there is sufficient prospect of success, a community order with a drug rehabilitation requirement under section 209 of the Criminal Justice Act 2003 may be a proper alternative to a short or moderate custodial sentence.

A case of particular gravity, reflected by multiple features of culpability or harm in step 1, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page.

Offence Category	Starting Point ( <i>Applicable to all offenders</i> )	Category Range ( <i>Applicable to all offenders</i> )
Category 1	3 years' custody	2 – 6 years' custody
Category 2	1 year's custody	High level community order – 2 years' custody
Category 3	High Level Community Order	Low level community order – 26 weeks' custody

The table below 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 starting point. **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.

When sentencing **category 2 or 3** offences, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?

#### 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 include:*

Child at home (or returns home) when offence committed

Offence committed at night

Gratuitous degradation of the victim

Any steps taken to prevent the victim reporting the incident or obtaining assistance and/or from assisting or supporting the prosecution

Victim compelled to leave their home (in particular victims of domestic violence)

Established evidence of community impact

Commission of offence whilst under the influence of alcohol or drugs

Failure to comply with current court orders

Offence committed whilst on licence

Offences Taken Into Consideration (TICs)

#### Factors reducing seriousness or reflecting personal mitigation

Offender has made voluntary reparation to the victim

Subordinate role in a group or gang

No previous convictions or no relevant/recent convictions

Remorse

Good character and/or exemplary conduct

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

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

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

Lapse of time since the offence where this is not the fault of the offender

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

Sole or primary carer for dependent relatives

\* Where sentencing an offender for a qualifying third domestic burglary, the Court must apply Section 111 of the Powers of the Criminal Courts (Sentencing) Act 2000 and impose a custodial term of at least three years, unless it is satisfied that there are particular circumstances which relate to any of the offences or to the offender which would make it unjust to do so.

### **STEP THREE**

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

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

Where a minimum mandatory sentence is imposed under section 111 Powers of Criminal Courts (Sentencing) Act, the discount for an early guilty plea must not exceed 20 per cent.

### **STEP FIVE**

#### **Dangerousness**

A burglary offence under section 9 Theft Act 1986 is a serious specified offence within the meaning of chapter 5 of the Criminal Justice Act 2003 if it was committed with the intent to (a) inflict grievous bodily harm on a person, or (b) do unlawful damage to a building or anything in it. The court should consider whether having regard to the criteria contained in that chapter it would be appropriate to award imprisonment for public protection or an extended sentence. Where offenders meet the dangerousness criteria, the notional determinate sentence should be used as the basis for the setting of a minimum term.

### **STEP SIX**

#### **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 offending behaviour.

### **STEP SEVEN**

#### **Compensation and ancillary orders**

In all cases, courts should consider whether to make compensation and/or other ancillary orders.

### **STEP EIGHT**

#### **Reasons**

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

### **STEP NINE**

#### **Consideration for remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence at this final step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

# Non-domestic burglary

## Theft Act 1968 (section 9)

This is a serious specified offence for the purposes of section 224 Criminal Justice Act 2003 if it was committed with intent to:

- (a) inflict grievous bodily harm on a person, or
- (b) do unlawful damage to a building or anything in it.

Triable either way

Maximum when tried summarily: Level 5 fine and/or 26 weeks' custody

Maximum when tried on indictment: 10 years' custody

Offence range: Fine – 5 years' custody

This guideline applies to all offenders aged 18 and older, who are sentenced on or after 16 January 2012. The definitions at page 145 of 'starting point' and 'first time offender' do not apply for this guideline. Starting point and category ranges apply to all offenders in all cases, irrespective of plea or previous convictions.

## STEP ONE

### Determining the offence category

The court should determine the offence category using the table below.

<b>Category 1</b>	Greater harm <b>and</b> higher culpability
<b>Category 2</b>	Greater harm <b>and</b> lower culpability <b>or</b> lesser harm <b>and</b> higher culpability
<b>Category 3</b>	Lesser harm <b>and</b> lower culpability

The court should determine culpability and harm caused or intended, by reference **only** to the factors below, which comprise the principal factual elements of the offence. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting before making an overall assessment and determining the appropriate offence category.

Factors indicating greater harm	Factors indicating higher culpability
Theft of/damage to property causing a significant degree of loss to the victim (whether economic, commercial or personal value)	Premises or victim deliberately targeted (to include pharmacy or doctor's surgery and targeting due to vulnerability of victim or hostility based on disability, race, sexual orientation and so forth)
Soiling, ransacking or vandalism of property	A significant degree of planning or organisation
Victim on the premises (or returns) while offender present	Knife or other weapon carried (where not charged separately)
Trauma to the victim, beyond the normal inevitable consequence of intrusion and theft	Equipped for burglary (for example, implements carried and/or use of vehicle)
Violence used or threatened against victim	Member of a group or gang
Context of general public disorder	
Factors indicating lesser harm	Factors indicating lower culpability
Nothing stolen or only property of very low value to the victim (whether economic, commercial or personal)	Offence committed on impulse, with limited intrusion into property
Limited damage or disturbance to property	Offender exploited by others
	Mental disorder or learning disability, where linked to the commission of the offence

## STEP TWO

### Starting point and category range

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions.

Where the defendant is dependant on or has a propensity to misuse drugs and there is sufficient prospect of success, a community order with a drug rehabilitation requirement under section 209 of the Criminal Justice Act 2003 may be a proper alternative to a short or moderate custodial sentence.

A case of particular gravity, reflected by multiple features of culpability or harm in step 1, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page.

Offence Category	Starting Point ( <i>Applicable to all offenders</i> )	Category Range ( <i>Applicable to all offenders</i> )
Category 1	2 years' custody	1 – 5 years' custody
Category 2	18 weeks' custody	Low level community order – 51 weeks' custody
Category 3	Medium level community order	Band B fine – 18 weeks' custody

The table below 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 starting point. **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.

When sentencing **category 2 or 3** offences, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

When sentencing **category 3** offences, the court should also consider the community order threshold as follows:

- has the community order threshold been passed?

#### 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 include:*

Offence committed at night, particularly where staff present or likely to be present

Abuse of a position of trust

Gratuitous degradation of the victim

Any steps taken to prevent the victim reporting the incident or obtaining assistance and/or from assisting or supporting the prosecution

Established evidence of community impact

Commission of offence whilst under the influence of alcohol or drugs

Failure to comply with current court orders

Offence committed whilst on licence

Offences Taken Into Consideration (TICs)

#### Factors reducing seriousness or reflecting personal mitigation

Offender has made voluntary reparation to the victim

Subordinate role in a group or gang

No previous convictions or no relevant/recent convictions

Remorse

Good character and/or exemplary conduct

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

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

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

Lapse of time since the offence where this is not the fault of the offender

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

Sole or primary carer for dependent relatives



### **STEP THREE**

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

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

### **STEP FIVE**

#### **Dangerousness**

A burglary offence under section 9 of the Theft Act 1986 is a serious specified offence within the meaning of chapter 5 of the Criminal Justice Act 2003 if it was committed with the intent to (a) inflict grievous bodily harm on a person, or (b) do unlawful damage to a building or anything in it. The court should consider whether having regard to the criteria contained in that chapter it would be appropriate to award imprisonment for public protection or an extended sentence. Where offenders meet the dangerousness criteria, the notional determinate sentence should be used as the basis for the setting of a minimum term.

### **STEP SIX**

#### **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 offending behaviour.

### **STEP SEVEN**

#### **Compensation and ancillary orders**

In all cases, courts should consider whether to make compensation and/or other ancillary orders.

### **STEP EIGHT**

#### **Reasons**

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

### **STEP NINE**

#### **Consideration for remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence at this final step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

# Fraudulent evasion of a prohibition by bringing into or taking out of the UK a controlled drug

Misuse of Drugs Act 1971 (section 3)

Customs and Excise Management Act 1979  
(section 170(2))

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**Triable either way unless the defendant could receive the minimum sentence of seven years for a third drug trafficking offence under section 110 Powers of Criminal Courts (Sentencing) Act 2000 in which case the offence is triable only on indictment.**

## **Class A**

Maximum: Life imprisonment

Offence range: 3 years 6 months' – 16 years' custody

A class A offence is a drug trafficking offence for the purpose of imposing a minimum sentence under section 110 Powers of Criminal Courts (Sentencing) Act 2000

## **Class B**

Maximum: 14 years' custody and/or unlimited fine

Offence range: 12 weeks' – 10 years' custody

## **Class C**

Maximum: 14 years' custody and/or unlimited fine

Offence range: Community order – 8 years' custody

**STEP ONE**  
**Determining the offence category**

The court should determine the offender’s culpability (role) and the harm caused (quantity) with reference to the tables below.

In assessing culpability, the sentencer should weigh up all the factors of the case to determine role. Where there are characteristics present which fall under different role categories, the court should balance these characteristics to reach a fair assessment of the offender’s culpability.

In assessing harm, quantity is determined by the weight of the product. Purity is not taken into account at step 1 but is dealt with at step 2.

Where the operation is on the most serious and commercial scale, involving a quantity of drugs significantly higher than category 1, sentences of 20 years and above may be appropriate, depending on the role of the offender.

<p><b>Culpability demonstrated by offender’s role</b>                  One or more of these characteristics may demonstrate the offender’s role. These lists are not exhaustive.</p>
<p><b>LEADING role:</b></p> <ul style="list-style-type: none"> <li>• directing or organising buying and selling on a commercial scale;</li> <li>• substantial links to, and influence on, others in a chain;</li> <li>• close links to original source;</li> <li>• expectation of substantial financial gain;</li> <li>• uses business as cover;</li> <li>• abuses a position of trust or responsibility.</li> </ul>
<p><b>SIGNIFICANT role:</b></p> <ul style="list-style-type: none"> <li>• operational or management function within a chain;</li> <li>• involves others in the operation whether by pressure, influence, intimidation or reward;</li> <li>• motivated by financial or other advantage, whether or not operating alone;</li> <li>• some awareness and understanding of scale of operation.</li> </ul>
<p><b>LESSER role:</b></p> <ul style="list-style-type: none"> <li>• performs a limited function under direction;</li> <li>• engaged by pressure, coercion, intimidation;</li> <li>• involvement through naivety/exploitation;</li> <li>• no influence on those above in a chain;</li> <li>• very little, if any, awareness or understanding of the scale of operation;</li> <li>• if own operation, solely for own use (considering reasonableness of account in all the circumstances).</li> </ul>

<p><b>Category of harm</b>                  Indicative quantity of drug concerned (upon which the starting point is based):</p>
<p><b>Category 1</b></p> <ul style="list-style-type: none"> <li>• heroin, cocaine – 5kg;</li> <li>• ecstasy – 10,000 tablets;</li> <li>• LSD – 250,000 squares;</li> <li>• amphetamine – 20kg;</li> <li>• cannabis – 200kg;</li> <li>• ketamine – 5kg.</li> </ul>
<p><b>Category 2</b></p> <ul style="list-style-type: none"> <li>• heroin, cocaine – 1kg;</li> <li>• ecstasy – 2,000 tablets;</li> <li>• LSD – 25,000 squares;</li> <li>• amphetamine – 4kg;</li> <li>• cannabis – 40kg;</li> <li>• ketamine – 1kg.</li> </ul>
<p><b>Category 3</b></p> <ul style="list-style-type: none"> <li>• heroin, cocaine – 150g;</li> <li>• ecstasy – 300 tablets;</li> <li>• LSD – 2,500 squares;</li> <li>• amphetamine – 750g;</li> <li>• cannabis – 6kg;</li> <li>• ketamine – 150g.</li> </ul>
<p><b>Category 4</b></p> <ul style="list-style-type: none"> <li>• heroin, cocaine – 5g;</li> <li>• ecstasy – 20 tablets;</li> <li>• LSD – 170 squares;</li> <li>• amphetamine – 20g;</li> <li>• cannabis – 100g;</li> <li>• ketamine – 5g.</li> </ul>

**STEP TWO****Starting point and category range**

Having determined the category, 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. The court should then consider further adjustment within the category range for aggravating or mitigating features, set out over the page. In cases where the offender is regarded as being at the very top of the 'leading' role it may be justifiable for the court to depart from the guideline.

Where the defendant is dependent on or has a propensity to misuse drugs and there is sufficient prospect of success, a community order with a drug rehabilitation requirement under section 209 of the Criminal Justice Act 2003 can be a proper alternative to a short or moderate length custodial sentence.

For **class A** cases, section 110 of the Powers of Criminal Courts (Sentencing) Act 2000 provides that a court should impose a minimum sentence of at least seven years' imprisonment for a third class A trafficking offence except where the court is of the opinion that there are particular circumstances which (a) relate to any of the offences or to the offender; and (b) would make it unjust to do so in all the circumstances.

<b>CLASS A</b>	<b>Leading role</b>	<b>Significant role</b>	<b>Lesser role</b>
<b>Category 1</b>	<b>Starting point</b> 14 years' custody	<b>Starting point</b> 10 years' custody	<b>Starting point</b> 8 years' custody
	<b>Category range</b> 12 – 16 years' custody	<b>Category range</b> 9 – 12 years' custody	<b>Category range</b> 6 – 9 years' custody
<b>Category 2</b>	<b>Starting point</b> 11 years' custody	<b>Starting point</b> 8 years' custody	<b>Starting point</b> 6 years' custody
	<b>Category range</b> 9 – 13 years' custody	<b>Category range</b> 6 years 6 months' – 10 years' custody	<b>Category range</b> 5 – 7 years' custody
<b>Category 3</b>	<b>Starting point</b> 8 years 6 months' custody	<b>Starting point</b> 6 years' custody	<b>Starting point</b> 4 years 6 months' custody
	<b>Category range</b> 6 years 6 months' – 10 years' custody	<b>Category range</b> 5 – 7 years' custody	<b>Category range</b> 3 years 6 months' – 5 years' custody
<b>Category 4</b>	Where the quantity falls below the indicative amount set out for category 4 on the previous page, first identify the role for the importation offence, then refer to the starting point and ranges for possession or supply offences, depending on intent.		
	Where the quantity is significantly larger than the indicative amounts for category 4 but below category 3 amounts, refer to the category 3 ranges above.		

CLASS B	Leading role	Significant role	Lesser role
Category 1	<b>Starting point</b> 8 years' custody	<b>Starting point</b> 5 years 6 months' custody	<b>Starting point</b> 4 years' custody
	<b>Category range</b> 7 – 10 years' custody	<b>Category range</b> 5 – 7 years' custody	<b>Category range</b> 2 years 6 months' – 5 years' custody
Category 2	<b>Starting point</b> 6 years' custody	<b>Starting point</b> 4 years' custody	<b>Starting point</b> 2 years' custody
	<b>Category range</b> 4 years 6 months' – 8 years' custody	<b>Category range</b> 2 years 6 months' – 5 years' custody	<b>Category range</b> 18 months' – 3 years' custody
Category 3	<b>Starting point</b> 4 years' custody	<b>Starting point</b> 2 years' custody	<b>Starting point</b> 1 year's custody
	<b>Category range</b> 2 years 6 months' – 5 years' custody	<b>Category range</b> 18 months' – 3 years' custody	<b>Category range</b> 12 weeks' – 18 months' custody
Category 4	<p>Where the quantity falls below the indicative amount set out for category 4 on the previous page, first identify the role for the importation offence, then refer to the starting point and ranges for possession or supply offences, depending on intent.</p> <p>Where the quantity is significantly larger than the indicative amounts for category 4 but below category 3 amounts, refer to the category 3 ranges above.</p>		

CLASS C	Leading role	Significant role	Lesser role
Category 1	<b>Starting point</b> 5 years' custody	<b>Starting point</b> 3 years' custody	<b>Starting point</b> 18 months' custody
	<b>Category range</b> 4 – 8 years' custody	<b>Category range</b> 2 – 5 years' custody	<b>Category range</b> 1 – 3 years' custody
Category 2	<b>Starting point</b> 3 years 6 months' custody	<b>Starting point</b> 18 months' custody	<b>Starting point</b> 26 weeks' custody
	<b>Category range</b> 2 – 5 years' custody	<b>Category range</b> 1 – 3 years' custody	<b>Category range</b> 12 weeks' – 18 months' custody
Category 3	<b>Starting point</b> 18 months' custody	<b>Starting point</b> 26 weeks' custody	<b>Starting point</b> High level community order
	<b>Category range</b> 1 – 3 years' custody	<b>Category range</b> 12 weeks' – 18 months' custody	<b>Category range</b> Medium level community order – 12 weeks' custody
Category 4	<p>Where the quantity falls below the indicative amount set out for category 4 on the previous page, first identify the role for the importation offence, then refer to the starting point and ranges for possession or supply offences, depending on intent.</p> <p>Where the quantity is significantly larger than the indicative amounts for category 4 but below category 3 amounts, refer to the category 3 ranges above.</p>		

The table below 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 starting point. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

For appropriate **class C** ranges, consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

#### Factors increasing seriousness

##### *Statutory aggravating factors:*

Previous convictions, having regard to a) nature of the offence to which conviction relates and relevance to current offence; and b) time elapsed since conviction (see box at page 227 if third drug trafficking conviction)

Offender used or permitted a person under 18 to deliver a controlled drug to a third person

Offence committed on bail

##### *Other aggravating factors include:*

Sophisticated nature of concealment and/or attempts to avoid detection

Attempts to conceal or dispose of evidence, where not charged separately

Exposure of others to more than usual danger, for example drugs cut with harmful substances

Presence of weapon, where not charged separately

High purity

Failure to comply with current court orders

Offence committed on licence

#### Factors reducing seriousness or reflecting personal mitigation

Lack of sophistication as to nature of concealment

Involvement due to pressure, intimidation or coercion falling short of duress, except where already taken into account at step 1

Mistaken belief of the offender regarding the type of drug, taking into account the reasonableness of such belief in all the circumstances

Isolated incident

Low purity

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

Offender's vulnerability was exploited

Remorse

Good character and/or exemplary conduct

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

Serious medical conditions 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

Sole or primary carer for dependent relatives

**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 potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

For class A offences, where a minimum mandatory sentence is imposed under section 110 Powers of Criminal Courts (Sentencing) Act, the discount for an early guilty plea must not exceed 20 per cent.

**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 offending behaviour.

**STEP SIX**

**Confiscation and ancillary orders**

In all cases, the court is required to consider confiscation where the Crown invokes the process or where the court considers it appropriate. It should also 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 remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence at this final step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

# Supplying or offering to supply a controlled drug

Misuse of Drugs Act 1971 (section 4(3))

# Possession of a controlled drug with intent to supply it to another

Misuse of Drugs Act 1971 (section 5(3))

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**Triable either way unless the defendant could receive the minimum sentence of seven years for a third drug trafficking offence under section 110 Powers of Criminal Courts (Sentencing) Act 2000 in which case the offence is triable only on indictment.**

## **Class A**

Maximum: Life imprisonment

Offence range: Community order – 16 years' custody

A class A offence is a drug trafficking offence for the purpose of imposing a minimum sentence under section 110 Powers of Criminal Courts (Sentencing) Act 2000

## **Class B**

Maximum: 14 years' custody and/or unlimited fine

Offence range: Fine – 10 years' custody

## **Class C**

Maximum: 14 years' custody and/or unlimited fine

Offence range: Fine – 8 years' custody



## STEP ONE

### Determining the offence category

The court should determine the offender's culpability (role) and the harm caused (quantity/type of offender) with reference to the tables below.

In assessing culpability, the sentencer should weigh up all the factors of the case to determine role. Where there are characteristics present which fall under different role categories, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

In assessing harm, quantity is determined by the weight of the product. Purity is not taken into account at step 1 but is dealt with at step 2. Where the offence is **street dealing** or **supply of drugs in prison by a prison employee**, the quantity of the product is less indicative of the harm caused and therefore the **starting point is not based on quantity**.

Where the operation is on the most serious and commercial scale, involving a quantity of drugs significantly higher than category 1, sentences of 20 years and above may be appropriate, depending on the role of the offender.

See page 233.

**Culpability demonstrated by offender's role**

One or more of these characteristics may demonstrate the offender's role. These lists are not exhaustive.

**LEADING role:**

- directing or organising buying and selling on a commercial scale;
- substantial links to, and influence on, others in a chain;
- close links to original source;
- expectation of substantial financial gain;
- uses business as cover;
- abuses a position of trust or responsibility, for example prison employee, medical professional.

**SIGNIFICANT role:**

- operational or management function within a chain;
- involves others in the operation whether by pressure, influence, intimidation or reward;
- motivated by financial or other advantage, whether or not operating alone;
- some awareness and understanding of scale of operation;
- supply, other than by a person in a position of responsibility, to a prisoner for gain without coercion.

**LESSER role:**

- performs a limited function under direction;
- engaged by pressure, coercion, intimidation;
- involvement through naivety/exploitation;
- no influence on those above in a chain;
- very little, if any, awareness or understanding of the scale of operation;
- if own operation, absence of any financial gain, for example joint purchase for no profit, or sharing minimal quantity between peers on non-commercial basis.

**Category of harm**

Indicative quantity of drug concerned (upon which the starting point is based):

**Category 1**

- heroin, cocaine – 5kg;
- ecstasy – 10,000 tablets;
- LSD – 250,000 squares;
- amphetamine – 20kg;
- cannabis – 200kg;
- ketamine – 5kg.

**Category 2**

- heroin, cocaine – 1kg;
- ecstasy – 2,000 tablets;
- LSD – 25,000 squares;
- amphetamine – 4kg;
- cannabis – 40kg;
- ketamine – 1kg.

**Category 3**

Where the offence is selling directly to users\* ('street dealing'), the starting point is not based on a quantity, OR

where the offence is supply of drugs in prison by a prison employee, the starting point is not based on a quantity – see shaded box on page 232, OR

- heroin, cocaine – 150g;
- ecstasy – 300 tablets;
- LSD – 2,500 squares;
- amphetamine – 750g;
- cannabis – 6kg;
- ketamine – 150g.

**Category 4**

- heroin, cocaine – 5g;
- ecstasy – 20 tablets;
- LSD – 170 squares;
- amphetamine – 20g;
- cannabis – 100g;
- ketamine – 5g;

OR

where the offence is selling directly to users\* ('street dealing') the starting point is not based on quantity – go to category 3.

\* Including test purchase officers

## STEP TWO

### Starting point and category range

Having determined the category, 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. The court should then consider further adjustment within the category range for aggravating or mitigating features, set out on page 236. In cases where the offender is regarded as being at the very top of the 'leading' role it may be justifiable for the court to depart from the guideline.

Where the defendant is dependent on or has a propensity to misuse drugs and there is sufficient prospect of success, a community order with a drug rehabilitation requirement under section 209 of the Criminal Justice Act 2003 can be a proper alternative to a short or moderate length custodial sentence.

For **class A** cases, section 110 of the Powers of Criminal Courts (Sentencing) Act 2000 provides that a court should impose a minimum sentence of at least seven years' imprisonment for a third class A trafficking offence except where the court is of the opinion that there are particular circumstances which (a) relate to any of the offences or to the offender; and (b) would make it unjust to do so in all the circumstances.

CLASS A	Leading role	Significant role	Lesser role
Category 1	<b>Starting point</b> 14 years' custody	<b>Starting point</b> 10 years' custody	<b>Starting point</b> 7 years' custody
	<b>Category range</b> 12 – 16 years' custody	<b>Category range</b> 9 – 12 years' custody	<b>Category range</b> 6 – 9 years' custody
Category 2	<b>Starting point</b> 11 years' custody	<b>Starting point</b> 8 years' custody	<b>Starting point</b> 5 years' custody
	<b>Category range</b> 9 – 13 years' custody	<b>Category range</b> 6 years 6 months' – 10 years' custody	<b>Category range</b> 3 years 6 months' – 7 years' custody
Category 3	<b>Starting point</b> 8 years 6 months' custody	<b>Starting point</b> 4 years 6 months' custody	<b>Starting point</b> 3 years' custody
	<b>Category range</b> 6 years 6 months' – 10 years' custody	<b>Category range</b> 3 years 6 months' – 7 years' custody	<b>Category range</b> 2 – 4 years 6 months' custody
Category 4	<b>Starting point</b> 5 years 6 months' custody	<b>Starting point</b> 3 years 6 months' custody	<b>Starting point</b> 18 months' custody
	<b>Category range</b> 4 years 6 months' – 7 years 6 months' custody	<b>Category range</b> 2 – 5 years' custody	<b>Category range</b> High level community order – 3 years' custody

CLASS B		Leading role	Significant role	Lesser role
Category 1	<b>Starting point</b> 8 years' custody	<b>Starting point</b> 5 years 6 months' custody	<b>Starting point</b> 3 years' custody	
	<b>Category range</b> 7 – 10 years' custody	<b>Category range</b> 5 – 7 years' custody	<b>Category range</b> 2 years 6 months' – 5 years' custody	
Category 2	<b>Starting point</b> 6 years' custody	<b>Starting point</b> 4 years' custody	<b>Starting point</b> 1 year's custody	
	<b>Category range</b> 4 years 6 months' – 8 years' custody	<b>Category range</b> 2 years 6 months' – 5 years' custody	<b>Category range</b> 26 weeks' – 3 years' custody	
Category 3	<b>Starting point</b> 4 years' custody	<b>Starting point</b> 1 year's custody	<b>Starting point</b> High level community order	
	<b>Category range</b> 2 years 6 months' – 5 years' custody	<b>Category range</b> 26 weeks' – 3 years' custody	<b>Category range</b> Low level community order – 26 weeks' custody	
Category 4	<b>Starting point</b> 18 months' custody	<b>Starting point</b> High level community order	<b>Starting point</b> Low level community order	
	<b>Category range</b> 26 weeks' – 3 years' custody	<b>Category range</b> Medium level community order – 26 weeks' custody	<b>Category range</b> Band B fine – medium level community order	
CLASS C		Leading role	Significant role	Lesser role
Category 1	<b>Starting point</b> 5 years' custody	<b>Starting point</b> 3 years' custody	<b>Starting point</b> 18 months' custody	
	<b>Category range</b> 4 – 8 years' custody	<b>Category range</b> 2 – 5 years' custody	<b>Category range</b> 1 – 3 years' custody	
Category 2	<b>Starting point</b> 3 years 6 months' custody	<b>Starting point</b> 18 months' custody	<b>Starting point</b> 26 weeks' custody	
	<b>Category range</b> 2 – 5 years' custody	<b>Category range</b> 1 – 3 years' custody	<b>Category range</b> 12 weeks' – 18 months' custody	
Category 3	<b>Starting point</b> 18 months' custody	<b>Starting point</b> 26 weeks' custody	<b>Starting point</b> High level community order	
	<b>Category range</b> 1 – 3 years' custody	<b>Category range</b> 12 weeks' – 18 months' custody	<b>Category range</b> Low level community order – 12 weeks' custody	
Category 4	<b>Starting point</b> 26 weeks' custody	<b>Starting point</b> High level community order	<b>Starting point</b> Low level community order	
	<b>Category range</b> High level community order – 18 months' custody	<b>Category range</b> Low level community order – 12 weeks' custody	<b>Category range</b> Band A fine – medium level community order	

The table below 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 starting point. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

For appropriate **class B** and **C** ranges, consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

For appropriate **class B** and **C** ranges, the court should also consider the community threshold as follows:

- has the community threshold been passed?

#### Factors increasing seriousness

##### *Statutory aggravating factors:*

Previous convictions, having regard to a) nature of the offence to which conviction relates and relevance to current offence; and b) time elapsed since conviction (see shaded box at page 234 if third drug trafficking conviction)

Offender used or permitted a person under 18 to deliver a controlled drug to a third person

Offender 18 or over supplies or offers to supply a drug on, or in the vicinity of, school premises either when school in use as such or at a time between one hour before and one hour after they are to be used

Offence committed on bail

##### *Other aggravating factors include:*

Targeting of any premises intended to locate vulnerable individuals or supply to such individuals and/or supply to those under 18

Exposure of others to more than usual danger, for example drugs cut with harmful substances

Attempts to conceal or dispose of evidence, where not charged separately

Presence of others, especially children and/or non-users

Presence of weapon, where not charged separately

Charged as importation of a very small amount

High purity

Failure to comply with current court orders

Offence committed on licence

Established evidence of community impact

#### Factors reducing seriousness or reflecting personal mitigation

Involvement due to pressure, intimidation or coercion falling short of duress, except where already taken into account at step 1

Supply only of drug to which offender addicted

Mistaken belief of the offender regarding the type of drug, taking into account the reasonableness of such belief in all the circumstances

Isolated incident

Low purity

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

Offender's vulnerability was exploited

Remorse

Good character and/or exemplary conduct

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

Serious medical conditions 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

Sole or primary carer for dependent relatives

**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 potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

For class A offences, where a minimum mandatory sentence is imposed under section 110 Powers of Criminal Courts (Sentencing) Act, the discount for an early guilty plea must not exceed 20 per cent.

**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 offending behaviour.

**STEP SIX****Confiscation and ancillary orders**

In all cases, the court is required to consider confiscation where the Crown invokes the process or where the court considers it appropriate. It should also 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 remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence at this final step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.



# Production of a controlled drug

## Misuse of Drugs Act 1971 (section 4(2)(a) or (b))

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**Triable either way unless the defendant could receive the minimum sentence of seven years for a third drug trafficking offence under section 110 Powers of Criminal Courts (Sentencing) Act 2000 in which case the offence is triable only on indictment.**

### **Class A**

Maximum: Life imprisonment

Offence range: Community order – 16 years' custody

A class A offence is a drug trafficking offence for the purpose of imposing a minimum sentence under section 110 Powers of Criminal Courts (Sentencing) Act 2000

### **Class B**

Maximum: 14 years' custody

Offence range: Discharge – 10 years' custody

### **Class C**

Maximum: 14 years' custody

Offence range: Discharge – 8 years' custody

# Cultivation of cannabis plant

## Misuse of Drugs Act 1971 (section 6(2))

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Maximum: 14 years' custody

Offence range: Discharge – 10 years' custody



## STEP ONE

### Determining the offence category

The court should determine the offender's culpability (role) and the harm caused (output or potential output) with reference to the tables below.

In assessing culpability, the sentencer should weigh up all of the factors of the case to determine role. Where there are characteristics present which fall under different role categories, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

In assessing harm, output or potential output is determined by the weight of the product or number of plants/scale of operation. For production offences, purity is not taken into account at step 1 but is dealt with at step 2.

Where the operation is on the most serious and commercial scale, involving a quantity of drugs significantly higher than category 1, sentences of 20 years and above may be appropriate, depending on the role of the offender.

**Culpability demonstrated by offender's role**  
One or more of these characteristics may demonstrate the offender's role. These lists are not exhaustive.

**LEADING role:**

- directing or organising production on a commercial scale;
- substantial links to, and influence on, others in a chain;
- expectation of substantial financial gain;
- uses business as cover;
- abuses a position of trust or responsibility.

**SIGNIFICANT role:**

- operational or management function within a chain;
- involves others in the operation whether by pressure, influence, intimidation or reward;
- motivated by financial or other advantage, whether or not operating alone;
- some awareness and understanding of scale of operation.

**LESSER role:**

- performs a limited function under direction;
- engaged by pressure, coercion, intimidation;
- involvement through naivety/exploitation;
- no influence on those above in a chain;
- very little, if any, awareness or understanding of the scale of operation;
- if own operation, solely for own use (considering reasonableness of account in all the circumstances).

**Category of harm**

Indicative output or potential output (upon which the starting point is based):

**Category 1**

- heroin, cocaine – 5kg;
- ecstasy – 10,000 tablets;
- LSD – 250,000 tablets;
- amphetamine – 20kg;
- cannabis – operation capable of producing industrial quantities for commercial use;
- ketamine – 5kg.

**Category 2**

- heroin, cocaine – 1kg;
- ecstasy – 2,000 tablets;
- LSD – 25,000 squares;
- amphetamine – 4kg;
- cannabis – operation capable of producing significant quantities for commercial use;
- ketamine – 1kg.

**Category 3**

- heroin, cocaine – 150g;
- ecstasy – 300 tablets;
- LSD – 2,500 squares;
- amphetamine – 750g;
- cannabis – 28 plants;\*;
- ketamine – 150g.

**Category 4**

- heroin, cocaine – 5g;
- ecstasy – 20 tablets;
- LSD – 170 squares;
- amphetamine – 20g;
- cannabis – 9 plants (domestic operation);\*
- ketamine – 5g.

\* With assumed yield of 40g per plant

## STEP TWO

### Starting point and category range

Having determined the category, 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. The court should then consider further adjustment within the category range for aggravating or mitigating features, set out on page 243. In cases where the offender is regarded as being at the very top of the 'leading' role it may be justifiable for the court to depart from the guideline.

Where the defendant is dependent on or has a propensity to misuse drugs and there is sufficient prospect of success, a community order with a drug rehabilitation requirement under section 209 of the Criminal Justice Act 2003 can be a proper alternative to a short or moderate length custodial sentence.

For **class A** cases, section 110 of the Powers of Criminal Courts (Sentencing) Act 2000 provides that a court should impose a minimum sentence of at least seven years' imprisonment for a third class A trafficking offence except where the court is of the opinion that there are particular circumstances which (a) relate to any of the offences or to the offender; and (b) would make it unjust to do so in all the circumstances.

CLASS A	Leading role	Significant role	Lesser role
Category 1	<b>Starting point</b> 14 years' custody	<b>Starting point</b> 10 years' custody	<b>Starting point</b> 7 years' custody
	<b>Category range</b> 12 – 16 years' custody	<b>Category range</b> 9 – 12 years' custody	<b>Category range</b> 6 – 9 years' custody
Category 2	<b>Starting point</b> 11 years' custody	<b>Starting point</b> 8 years' custody	<b>Starting point</b> 5 years' custody
	<b>Category range</b> 9 – 13 years' custody	<b>Category range</b> 6 years 6 months' – 10 years' custody	<b>Category range</b> 3 years 6 months' – 7 years' custody
Category 3	<b>Starting point</b> 8 years 6 months' custody	<b>Starting point</b> 5 years' custody	<b>Starting point</b> 3 years 6 months' custody
	<b>Category range</b> 6 years 6 months' – 10 years' custody	<b>Category range</b> 3 years 6 months' – 7 years' custody	<b>Category range</b> 2 – 5 years' custody
Category 4	<b>Starting point</b> 5 years 6 months' custody	<b>Starting point</b> 3 years 6 months' custody	<b>Starting point</b> 18 months' custody
	<b>Category range</b> 4 years 6 months' – 7 years 6 months' custody	<b>Category range</b> 2 – 5 years' custody	<b>Category range</b> High level community order – 3 years' custody

CLASS B		Leading role	Significant role	Lesser role
Category 1	<b>Starting point</b> 8 years' custody	<b>Starting point</b> 5 years 6 months' custody	<b>Starting point</b> 3 years' custody	
	<b>Category range</b> 7 – 10 years' custody	<b>Category range</b> 5 – 7 years' custody	<b>Category range</b> 2 years 6 months' – 5 years' custody	
Category 2	<b>Starting point</b> 6 years' custody	<b>Starting point</b> 4 years' custody	<b>Starting point</b> 1 year's custody	
	<b>Category range</b> 4 years 6 months' – 8 years' custody	<b>Category range</b> 2 years 6 months' – 5 years' custody	<b>Category range</b> 26 weeks' – 3 years' custody	
Category 3	<b>Starting point</b> 4 years' custody	<b>Starting point</b> 1 year's custody	<b>Starting point</b> High level community order	
	<b>Category range</b> 2 years 6 months' – 5 years' custody	<b>Category range</b> 26 weeks' – 3 years' custody	<b>Category range</b> Low level community order – 26 weeks' custody	
Category 4	<b>Starting point</b> 1 year's custody	<b>Starting point</b> High level community order	<b>Starting point</b> Band C fine	
	<b>Category range</b> High level community order – 3 years' custody	<b>Category range</b> Medium level community order – 26 weeks' custody	<b>Category range</b> Discharge – medium level community order	
CLASS C		Leading role	Significant role	Lesser role
Category 1	<b>Starting point</b> 5 years' custody	<b>Starting point</b> 3 years' custody	<b>Starting point</b> 18 months' custody	
	<b>Category range</b> 4 – 8 years' custody	<b>Category range</b> 2 – 5 years' custody	<b>Category range</b> 1 – 3 years' custody	
Category 2	<b>Starting point</b> 3 years 6 months' custody	<b>Starting point</b> 18 months' custody	<b>Starting point</b> 26 weeks' custody	
	<b>Category range</b> 2 – 5 years' custody	<b>Category range</b> 1 – 3 years' custody	<b>Category range</b> High level community order – 18 months' custody	
Category 3	<b>Starting point</b> 18 months' custody	<b>Starting point</b> 26 weeks' custody	<b>Starting point</b> High level community order	
	<b>Category range</b> 1 – 3 years' custody	<b>Category range</b> High level community order – 18 months' custody	<b>Category range</b> Low level community order – 12 weeks' custody	
Category 4	<b>Starting point</b> 26 weeks' custody	<b>Starting point</b> High level community order	<b>Starting point</b> Band C fine	
	<b>Category range</b> High level community order – 18 months' custody	<b>Category range</b> Low level community order – 12 weeks' custody	<b>Category range</b> Discharge – medium level community order	

The table below 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 starting point. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Where appropriate, consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

Where appropriate, the court should also consider the community threshold as follows:

- has the community threshold been passed?

#### Factors increasing seriousness

##### *Statutory aggravating factors:*

Previous convictions, having regard to a) nature of the offence to which conviction relates and relevance to current offence; and b) time elapsed since conviction (see shaded box at page 241 if third drug trafficking conviction)

Offence committed on bail

##### *Other aggravating factors include:*

Nature of any likely supply

Level of any profit element

Use of premises accompanied by unlawful access to electricity/other utility supply of others

Ongoing/large scale operation as evidenced by presence and nature of specialist equipment

Exposure of others to more than usual danger, for example drugs cut with harmful substances

Attempts to conceal or dispose of evidence, where not charged separately

Presence of others, especially children and/or non-users

Presence of weapon, where not charged separately

High purity or high potential yield

Failure to comply with current court orders

Offence committed on licence

Established evidence of community impact

#### Factors reducing seriousness or reflecting personal mitigation

Involvement due to pressure, intimidation or coercion falling short of duress, except where already taken into account at step 1

Isolated incident

Low purity

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

Offender's vulnerability was exploited

Remorse

Good character and/or exemplary conduct

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

Serious medical conditions 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

Sole or primary carer for dependent relatives

### **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 potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

For class A offences, where a minimum mandatory sentence is imposed under section 110 Powers of Criminal Courts (Sentencing) Act, the discount for an early guilty plea must not exceed 20 per cent.

### **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 offending behaviour.

### **STEP SIX**

#### **Confiscation and ancillary orders**

In all cases, the court is required to consider confiscation where the Crown invokes the process or where the court considers it appropriate. It should also 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 remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence at this final step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

# Permitting premises to be used

## Misuse of Drugs Act 1971 (section 8)

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**Triable either way unless the defendant could receive the minimum sentence of seven years for a third drug trafficking offence under section 110 Powers of Criminal Courts (Sentencing) Act 2000 in which case the offence is triable only on indictment.**

### **Class A**

Maximum: 14 years' custody

Offence range: Community order – 4 years' custody

A class A offence is a drug trafficking offence for the purpose of imposing a minimum sentence under section 110 Powers of Criminal Courts (Sentencing) Act 2000

### **Class B**

Maximum: 14 years' custody

Offence range: Fine – 18 months' custody

### **Class C**

Maximum: 14 years' custody

Offence range: Discharge – 26 weeks' custody

## STEP ONE

### Determining the offence category

The court should determine the offender's culpability and the harm caused (extent of the activity and/or the quantity of drugs) with reference to the table below.

In assessing harm, quantity is determined by the weight of the product. Purity is not taken into account at step 1 but is dealt with at step 2.

<b>Category 1</b>	Higher culpability <b>and</b> greater harm
<b>Category 2</b>	Lower culpability <b>and</b> greater harm; <b>or</b> higher culpability <b>and</b> lesser harm
<b>Category 3</b>	Lower culpability <b>and</b> lesser harm

#### Factors indicating culpability (non-exhaustive)

##### *Higher culpability:*

Permits premises to be used primarily for drug activity, for example crack house

Permits use in expectation of substantial financial gain

Uses legitimate business premises to aid and/or conceal illegal activity, for example public house or club

##### *Lower culpability:*

Permits use for limited or no financial gain

No active role in any supply taking place

Involvement through naivety

#### Factors indicating harm (non-exhaustive)

##### *Greater harm:*

Regular drug-related activity

Higher quantity of drugs, for example:

- heroin, cocaine – more than 5g;
- cannabis – more than 50g.

##### *Lesser harm:*

Infrequent drug-related activity

Lower quantity of drugs, for example:

- heroin, cocaine – up to 5g;
- cannabis – up to 50g.

## STEP TWO

### Starting point and category range

Having determined the category, the court should use the table below to identify the corresponding starting point to reach a sentence within the category range. The starting point applies to all offenders irrespective of plea or previous convictions. The court should then consider further adjustment within the category range for aggravating or mitigating features, set out over the page.

Where the defendant is dependent on or has a propensity to misuse drugs and there is sufficient prospect of success, a community order with a drug rehabilitation requirement under section 209 of the Criminal Justice Act 2003 can be a proper alternative to a short or moderate length custodial sentence.

For **class A** cases, section 110 of the Powers of Criminal Courts (Sentencing) Act 2000 provides that a court should impose a minimum sentence of at least seven years' imprisonment for a third class A trafficking offence except where the court is of the opinion that there are particular circumstances which (a) relate to any of the offences or to the offender; and (b) would make it unjust to do so in all the circumstances.

#### Class A

Offence category	Starting point (applicable to all offenders)	Category range (applicable to all offenders)
Category 1	2 years 6 months' custody	18 months' – 4 years' custody
Category 2	36 weeks' custody	High level community order – 18 months' custody
Category 3	Medium level community order	Low level community order – high level community order

#### Class B

Offence category	Starting point (applicable to all offenders)	Category range (applicable to all offenders)
Category 1	1 year's custody	26 weeks' – 18 months' custody
Category 2	High level community order	Low level community order – 26 weeks' custody
Category 3	Band C fine	Band A fine – low level community order

#### Class C

Offence category	Starting point (applicable to all offenders)	Category range (applicable to all offenders)
Category 1	12 weeks' custody	High level community order – 26 weeks' custody*
Category 2	Low level community order	Band C fine – high level community order
Category 3	Band A fine	Discharge – band C fine

\* When tried summarily, the maximum penalty is 12 weeks' custody.



The table below 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 starting point. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Where appropriate, consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

Where appropriate, the court should also consider the community threshold as follows:

- has the community threshold been passed?

#### Factors increasing seriousness

##### *Statutory aggravating factors:*

Previous convictions, having regard to a) nature of the offence to which conviction relates and relevance to current offence; and b) time elapsed since conviction (see shaded box at page 247 if third drug trafficking conviction)

Offence committed on bail

##### *Other aggravating factors include:*

Length of time over which premises used for drug activity

Volume of drug activity permitted

Premises adapted to facilitate drug activity

Location of premises, for example proximity to school

Attempts to conceal or dispose of evidence, where not charged separately

Presence of others, especially children and/or non-users

High purity

Presence of weapons, where not charged separately

Failure to comply with current court orders

Offence committed on licence

Established evidence of community impact

#### Factors reducing seriousness or reflecting personal mitigation

Involvement due to pressure, intimidation or coercion falling short of duress

Isolated incident

Low purity

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

Offender's vulnerability was exploited

Remorse

Good character and/or exemplary conduct

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

Serious medical conditions 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

Sole or primary carer for dependent relatives

### **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 potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

For class A offences, where a minimum mandatory sentence is imposed under section 110 Powers of Criminal Courts (Sentencing) Act, the discount for an early guilty plea must not exceed 20 per cent.

### **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 offending behaviour.

### **STEP SIX**

#### **Confiscation and ancillary orders**

In all cases, the court is required to consider confiscation where the Crown invokes the process or where the court considers it appropriate. It should also 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 remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence at this final step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.



# Possession of a controlled drug

Misuse of Drugs Act 1971 (section 5(2))

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## Triable either way

### Class A

Maximum: 7 years' custody

Offence range: Fine – 51 weeks' custody

### Class B

Maximum: 5 years' custody

Offence range: Discharge – 26 weeks' custody

### Class C

Maximum: 2 years' custody

Offence range: Discharge – Community order

## STEP ONE

### Determining the offence category

The court should identify the offence category based on the class of drug involved.

<b>Category 1</b>	Class A drug
<b>Category 2</b>	Class B drug
<b>Category 3</b>	Class C drug

## STEP TWO

### Starting point and category range

The court should use the table below to identify the corresponding starting point. The starting point applies to all offenders irrespective of plea or previous convictions. The court should then consider further adjustment within the category range for aggravating or mitigating features, set out on the opposite page.

Where the defendant is dependent on or has a propensity to misuse drugs and there is sufficient prospect of success, a community order with a drug rehabilitation requirement under section 209 of the Criminal Justice Act 2003 can be a proper alternative to a short or moderate length custodial sentence.

<b>Offence category</b>	<b>Starting point (applicable to all offenders)</b>	<b>Category range (applicable to all offenders)</b>
<b>Category 1 (class A)</b>	Band C fine	Band A fine – 51 weeks' custody
<b>Category 2 (class B)</b>	Band B fine	Discharge – 26 weeks' custody
<b>Category 3 (class C)</b>	Band A fine	Discharge – medium level community order

The table below 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 starting point. **In particular, possession of drugs in prison is 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.

Where appropriate, consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

Where appropriate, the court should also consider the community threshold as follows:

- has the community threshold been passed?

Factors increasing seriousness	Factors reducing seriousness or reflecting personal mitigation
<i>Statutory aggravating factors:</i>	No previous convictions <b>or</b> no relevant or recent convictions
Previous convictions, having regard to a) nature of the offence to which conviction relates and relevance to current offence; and b) time elapsed since conviction	Remorse
Offence committed on bail	Good character and/or exemplary conduct
<i>Other aggravating factors include:</i>	Offender is using cannabis to help with a diagnosed medical condition
Possession of drug in prison	Determination and/or demonstration of steps having been taken to address addiction or offending behaviour
Presence of others, especially children and/or non-users	Serious medical conditions requiring urgent, intensive or long-term treatment
Possession of drug in a school or licensed premises	Isolated incident
Failure to comply with current court orders	Age and/or lack of maturity where it affects the responsibility of the offender
Offence committed on licence	Mental disorder or learning disability
Attempts to conceal or dispose of evidence, where not charged separately	Sole or primary carer for dependent relatives
Charged as importation of a very small amount	
Established evidence of community impact	

### **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 potential 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**

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 offending behaviour.

### **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 remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence at this final step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

# Sexual assault

## Sexual Offences Act 2003 (section 3)

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**Triable either way**

**Maximum: 10 years' custody**

**Offence range: Community order – 7 years' custody**

**For convictions on or after 3 December 2012 (irrespective of the date of commission of the offence), this is a specified offence for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.**



**STEP ONE****Determining the offence category**

The court should determine which categories of harm and culpability the offence falls into by reference **only** to the tables below.

Harm		Culpability
<b>Category 1</b>	<ul style="list-style-type: none"> <li>Severe psychological or physical harm</li> <li>Abduction</li> <li>Violence or threats of violence</li> <li>Forced/uninvited entry into victim's home</li> </ul>	<b>A</b>
<b>Category 2</b>	<ul style="list-style-type: none"> <li>Touching of naked genitalia or naked breasts</li> <li>Prolonged detention/sustained incident</li> <li>Additional degradation/humiliation</li> <li>Victim is particularly vulnerable due to personal circumstances*</li> </ul> <p>* for children under 13 please refer to the guideline on page 277</p>	Significant degree of planning Offender acts together with others to commit the offence Use of alcohol/drugs on victim to facilitate the offence Abuse of trust Previous violence against victim Offence committed in course of burglary Recording of offence Commercial exploitation and/or motivation Offence racially or religiously aggravated Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation) or transgender identity (or presumed transgender identity) Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)
<b>Category 3</b>	Factor(s) in categories 1 and 2 not present	<b>B</b>
		Factor(s) in category A not present

**STEP TWO****Starting point and category range**

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range on the next page. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out on the next page.

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.

Where there is a sufficient prospect of rehabilitation, a community order with a sex offender treatment programme requirement under section 202 of the Criminal Justice Act 2003 can be a proper alternative to a short or moderate length custodial sentence.

	A	B
Category 1	<b>Starting point</b> 4 years' custody	<b>Starting point</b> 2 years 6 months' custody
	<b>Category range</b> 3 – 7 years' custody	<b>Category range</b> 2 – 4 years' custody
Category 2	<b>Starting point</b> 2 years' custody	<b>Starting point</b> 1 year's custody
	<b>Category range</b> 1 – 4 years' custody	<b>Category range</b> High level community order – 2 years' custody
Category 3	<b>Starting point</b> 26 weeks' custody	<b>Starting point</b> High level community order
	<b>Category range</b> High level community order – 1 year's custody	<b>Category range</b> Medium level community order – 26 weeks' custody

The table below 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 starting point. **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.

When sentencing appropriate **category 2 or 3 offences**, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

### Aggravating factors

#### *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*

Specific targeting of a particularly vulnerable victim

Blackmail or other threats made (where not taken into account at step one)

Location of offence

Timing of offence

Use of weapon or other item to frighten or injure

Victim compelled to leave their home (including victims of domestic violence)

Failure to comply with current court orders

Offence committed whilst on licence

Exploiting contact arrangements with a child to commit an offence

Presence of others, especially children

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Attempts to dispose of or conceal evidence

Commission of offence whilst under the influence of alcohol or drugs

### Mitigating factors

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

Remorse

Previous good character and/or exemplary conduct\*

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

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

Demonstration of steps taken to address offending behaviour

\* Previous good character/exemplary conduct is different from having no previous convictions. The more serious the offence, the less the weight which should normally be attributed to this factor. Where previous good character/exemplary conduct has been used to facilitate the offence, this mitigation should not normally be allowed and such conduct may constitute an aggravating factor.

**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 potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

**STEP FIVE****Dangerousness**

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to award an extended sentence (section 226A).

**STEP SIX****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 offending behaviour.

**STEP SEVEN****Ancillary orders**

The court must consider whether to make any ancillary orders. The court must also consider what other requirements or provisions may *automatically* apply. Further information is included on page 303.

**STEP EIGHT****Reasons**

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

**STEP NINE****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.

# Sexual assault of a child under 13

Sexual Offences Act 2003 (section 7)

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**Triable either way**

**Maximum: 14 years' custody**

**Offence range: Community order – 9 years' custody**

**For offences committed on or after 3 December 2012, this is an offence listed in Part 1 of Schedule 15B for the purposes of section 224A (life sentence for second listed offence) of the Criminal Justice Act 2003.**

**For convictions on or after 3 December 2012 (irrespective of the date of commission of the offence), this is a specified offence for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.**

**STEP ONE****Determining the offence category**

The court should determine which categories of harm and culpability the offence falls into by reference **only** to the tables below.

Harm	
<b>Category 1</b>	<ul style="list-style-type: none"> <li>Severe psychological or physical harm</li> <li>Abduction</li> <li>Violence or threats of violence</li> <li>Forced/uninvited entry into victim's home</li> </ul>
<b>Category 2</b>	<ul style="list-style-type: none"> <li>Touching of naked genitalia or naked breast area</li> <li>Prolonged detention/sustained incident</li> <li>Additional degradation/humiliation</li> <li>Child is particularly vulnerable due to extreme youth and/or personal circumstances</li> </ul>
<b>Category 3</b>	Factor(s) in categories 1 and 2 not present

Culpability
<b>A</b>
Significant degree of planning
Offender acts together with others to commit the offence
Use of alcohol/drugs on victim to facilitate the offence
Grooming behaviour used against victim
Abuse of trust
Previous violence against victim
Offence committed in course of burglary
Sexual images of victim recorded, retained, solicited or shared
Deliberate isolation of victim
Commercial exploitation and/or motivation
Offence racially or religiously aggravated
Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation) or transgender identity (or presumed transgender identity)
Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)
<b>B</b>
Factor(s) in category A not present

**STEP TWO****Starting point and category range**

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range on the next page. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out on the next page.

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.

Where there is a sufficient prospect of rehabilitation, a community order with a sex offender treatment programme requirement under section 202 of the Criminal Justice Act 2003 can be a proper alternative to a short or moderate length custodial sentence.

	A	B
Category 1	<b>Starting point</b> 6 years' custody	<b>Starting point</b> 4 years' custody
	<b>Category range</b> 4 – 9 years' custody	<b>Category range</b> 3 – 7 years' custody
Category 2	<b>Starting point</b> 4 years' custody	<b>Starting point</b> 2 years' custody
	<b>Category range</b> 3 – 7 years' custody	<b>Category range</b> 1 – 4 years' custody
Category 3	<b>Starting point</b> 1 year's custody	<b>Starting point</b> 26 weeks' custody
	<b>Category range</b> 26 weeks' – 2 years' custody	<b>Category range</b> High level community order – 1 year's custody

The table below 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 starting point. **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.

### Aggravating factors

#### *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*

Specific targeting of a particularly vulnerable child

Blackmail or other threats made (where not taken into account at step one)

Location of offence

Timing of offence

Use of weapon or other item to frighten or injure

Victim compelled to leave their home, school, etc

Failure to comply with current court orders

Offence committed whilst on licence

Exploiting contact arrangements with a child to commit an offence

Presence of others, especially other children

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Attempts to dispose of or conceal evidence

Commission of offence whilst under the influence of alcohol or drugs

Victim encouraged to recruit others

### Mitigating factors

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

Remorse

Previous good character and/or exemplary conduct\*

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

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

\* Previous good character/exemplary conduct is different from having no previous convictions. The more serious the offence, the less the weight which should normally be attributed to this factor. Where previous good character/exemplary conduct has been used to facilitate the offence, this mitigation should not normally be allowed and such conduct may constitute an aggravating factor.

In the context of this offence, previous good character/exemplary conduct should not normally be given any significant weight and will not normally justify a reduction in what would otherwise be the appropriate sentence.

**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 potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

**STEP FIVE****Dangerousness**

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to award a life sentence (section 224A) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

**STEP SIX****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 offending behaviour.

**STEP SEVEN****Ancillary orders**

The court must consider whether to make any ancillary orders. The court must also consider what other requirements or provisions may *automatically* apply. Further information is included on page 303.

**STEP EIGHT****Reasons**

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

**STEP NINE****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.

# Possession of indecent photograph of child

Criminal Justice Act 1988 (section 160)

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Triable either way

Maximum: 5 years' custody

Offence range: Community order – 3 years' custody

# Indecent photographs of children

Protection of Children Act 1978 (section 1)

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Triable either way

Maximum: 10 years' custody

Offence range: Community order – 9 years' custody

For section 1 offences committed on or after 3 December 2012, this is an offence listed in Part 1 of Schedule 15B for the purposes of section 224A (life sentence for second listed offence) of the Criminal Justice Act 2003.

For convictions on or after 3 December 2012 (irrespective of the date of commission of the offence), these are specified offences for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.



## STEP ONE

### Determining the offence category

The court should determine the offence category using the table below.

	Possession	Distribution*	Production**
Category A	Possession of images involving penetrative sexual activity	Sharing images involving penetrative sexual activity	Creating images involving penetrative sexual activity
	Possession of images involving sexual activity with an animal or sadism	Sharing images involving sexual activity with an animal or sadism	Creating images involving sexual activity with an animal or sadism
Category B	Possession of images involving non-penetrative sexual activity	Sharing of images involving non-penetrative sexual activity	Creating images involving non-penetrative sexual activity
Category C	Possession of other indecent images not falling within categories A or B	Sharing of other indecent images not falling within categories A or B	Creating other indecent images not falling within categories A or B

\* Distribution includes possession with a view to distributing or sharing images.

\*\* Production includes the taking or making of any image at source, for instance the original image.

Making an image by simple downloading should be treated as possession for the purposes of sentencing.

**In most cases the intrinsic character of the most serious of the offending images will initially determine the appropriate category. If, however, the most serious images are unrepresentative of the offender's conduct a lower category may be appropriate. A lower category will not, however, be appropriate if the offender has produced or taken (for example photographed) images of a higher category.**

See page 283.

**STEP TWO****Starting point and category range**

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out on the next page.

Where there is a sufficient prospect of rehabilitation, a community order with a sex offender treatment programme requirement under section 202 of the Criminal Justice Act 2003 can be a proper alternative to a short or moderate length custodial sentence.

	<b>Possession</b>	<b>Distribution</b>	<b>Production</b>
<b>Category A</b>	<b>Starting point</b> 1 year's custody	<b>Starting point</b> 3 years' custody	<b>Starting point</b> 6 years' custody
	<b>Category range</b> 26 weeks' – 3 years' custody	<b>Category range</b> 2 – 5 years' custody	<b>Category range</b> 4 – 9 years' custody
<b>Category B</b>	<b>Starting point</b> 26 weeks' custody	<b>Starting point</b> 1 year's custody	<b>Starting point</b> 2 years' custody
	<b>Category range</b> High level community order – 18 months' custody	<b>Category range</b> 26 weeks' – 2 years' custody	<b>Category range</b> 1 – 4 years' custody
<b>Category C</b>	<b>Starting point</b> High level community order	<b>Starting point</b> 13 weeks' custody	<b>Starting point</b> 18 months' custody
	<b>Category range</b> Medium level community order – 26 weeks' custody	<b>Category range</b> High level community order – 26 weeks' custody	<b>Category range</b> 1 – 3 years' custody

See page 284.

The table below 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 starting point. **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.

When sentencing appropriate **category B or C offences**, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

Aggravating factors	Mitigating factors
<i>Statutory aggravating factors</i>	No previous convictions <b>or</b> no relevant/recent convictions
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	Remorse
Offence committed whilst on bail	Previous good character and/or exemplary conduct*
<i>Other aggravating factors</i>	Age and/or lack of maturity where it affects the responsibility of the offender
Failure to comply with current court orders	Mental disorder or learning disability, particularly where linked to the commission of the offence
Offence committed whilst on licence	Demonstration of steps taken to address offending behaviour
Age and/or vulnerability of the child depicted†	
Discernable pain or distress suffered by child depicted	
Period over which images were possessed, distributed or produced	
High volume of images possessed, distributed or produced	
Placing images where there is the potential for a high volume of viewers	
Collection includes moving images	
Attempts to dispose of or conceal evidence	
Abuse of trust	
Child depicted known to the offender	
Active involvement in a network or process that facilitates or commissions the creation or sharing of indecent images of children	
Commercial exploitation and/or motivation	
Deliberate or systematic searching for images portraying young children, category A images or the portrayal of familial sexual abuse	
Large number of different victims	
Child depicted intoxicated or drugged	

\* Previous good character/exemplary conduct is different from having no previous convictions. The more serious the offence, the less the weight which should normally be attributed to this factor. Where previous good character/exemplary conduct has been used to facilitate the offence, this mitigation should not normally be allowed and such conduct may constitute an aggravating factor.

† Age and/or vulnerability of the child should be given significant weight. In cases where the actual age of the victim is difficult to determine sentencers should consider the development of the child (infant, pre-pubescent, post-pubescent).

**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 potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

**STEP FIVE****Dangerousness**

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to award a life sentence (section 224A) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

**STEP SIX****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 offending behaviour.

**STEP SEVEN****Ancillary orders**

The court must consider whether to make any ancillary orders. The court must also consider what other requirements or provisions may *automatically* apply. Further information is included on page 303.

**STEP EIGHT****Reasons**

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

**STEP NINE****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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# Causing or inciting prostitution for gain

Sexual Offences Act 2003 (section 52)

# Controlling prostitution for gain

Sexual Offences Act 2003 (section 53)

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**Triable either way**

**Maximum: 7 years' custody**

**Offence range: Community order – 6 years' custody**

For convictions on or after 3 December 2012 (irrespective of the date of commission of the offence), these are specified offences for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

The terms “prostitute” and “prostitution” are used in this guideline in accordance with the statutory language contained in the Sexual Offences Act 2003.

**STEP ONE****Determining the offence category**

The court should determine which categories of harm and culpability the offence falls into by reference **only** to the tables below.

Harm		Culpability
<b>Category 1</b>	<ul style="list-style-type: none"> <li>Abduction/detention</li> <li>Violence or threats of violence</li> <li>Sustained and systematic psychological abuse</li> <li>Individual(s) forced or coerced to participate in unsafe/degrading sexual activity</li> <li>Individual(s) forced or coerced into seeing many “customers”</li> <li>Individual(s) forced/coerced/deceived into prostitution</li> </ul>	<b>A</b>
		Causing, inciting or controlling prostitution on significant commercial basis
		Expectation of significant financial or other gain
		Abuse of trust
		Exploitation of those known to be trafficked
		Significant involvement in limiting the freedom of prostitute(s)
		Grooming of individual(s) to enter prostitution including through cultivation of a dependency on drugs or alcohol
<b>Category 2</b>	Factor(s) in category 1 not present	<b>B</b>
		Close involvement with prostitute(s), for example control of finances, choice of clients, working conditions, etc (where offender’s involvement is not as a result of coercion)
		<b>C</b>
		Performs limited function under direction
		Close involvement but engaged by coercion/intimidation/exploitation

**STEP TWO****Starting point and category range**

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range on the next page. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out on the next page.

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.

Where there is a sufficient prospect of rehabilitation, a community order with a sex offender treatment programme requirement under section 202 of the Criminal Justice Act 2003 can be a proper alternative to a short or moderate length custodial sentence.

	A	B	C
Category 1	<b>Starting point</b> 4 years' custody	<b>Starting point</b> 2 years 6 months' custody	<b>Starting point</b> 1 year's custody
	<b>Category range</b> 3 – 6 years' custody	<b>Category range</b> 2 – 4 years' custody	<b>Category range</b> 26 weeks' – 2 years' custody
Category 2	<b>Starting point</b> 2 years 6 months' custody	<b>Starting point</b> 1 year's custody	<b>Starting point</b> Medium level community order
	<b>Category range</b> 2 – 5 years' custody	<b>Category range</b> High level community order – 2 year's custody	<b>Category range</b> Low level community order – High level community order

The table below 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 starting point. **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.

When sentencing appropriate **category 2 offences**, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

Aggravating factors
<i>Statutory aggravating factors</i>
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
<i>Other aggravating factors</i>
Failure to comply with current court orders
Offence committed whilst on licence
Deliberate isolation of prostitute(s)
Threats made to expose prostitute(s) to the authorities (for example, immigration or police), family/friends or others
Harm threatened against the family/friends of prostitute(s)
Passport/identity documents removed
Prostitute(s) prevented from seeking medical treatment
Food withheld
Earnings withheld/kept by offender or evidence of excessive wage reduction or debt bondage, inflated travel or living expenses or unreasonable interest rates
Any steps taken to prevent the reporting of an incident, obtaining assistance and/or from assisting or supporting the prosecution

Attempts to dispose of or conceal evidence
Prostitute(s) forced or coerced into pornography
Timescale over which operation has been run
Mitigating factors
No previous convictions <b>or</b> no relevant/recent convictions
Remorse
Previous good character and/or exemplary conduct*
Age and/or lack of maturity where it affects the responsibility of the offender
Mental disorder or learning disability, particularly where linked to the commission of the offence
Demonstration of steps taken to address offending behaviour

- \* Previous good character/exemplary conduct is different from having no previous convictions. The more serious the offence, the less the weight which should normally be attributed to this factor. Where previous good character/exemplary conduct has been used to facilitate the offence, this mitigation should not normally be allowed and such conduct may constitute an aggravating factor.



**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 potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

**STEP FIVE****Dangerousness**

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to award an extended sentence (section 226A).

**STEP SIX****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 offending behaviour.

**STEP SEVEN****Ancillary orders**

The court must consider whether to make any ancillary orders. The court must also consider what other requirements or provisions may *automatically* apply. Further information is included on page 303.

**STEP EIGHT****Reasons**

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

**STEP NINE****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.

# Keeping a brothel used for prostitution

## Sexual Offences Act 1956 (section 33A)

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**Triable either way**

**Maximum: 7 years' custody**

**Offence range: Community order – 6 years' custody**

The terms “prostitute” and “prostitution” are used in this guideline in accordance with the statutory language contained in the Sexual Offences Act 2003.

## STEP ONE

### Determining the offence category

The court should determine which categories of harm and culpability the offence falls into by reference **only** to the tables below.

Harm		Culpability
<b>Category 1</b>	<ul style="list-style-type: none"> <li>Under 18 year olds working in brothel</li> <li>Abduction/detention</li> <li>Violence or threats of violence</li> <li>Sustained and systematic psychological abuse</li> <li>Those working in brothel forced or coerced to participate in unsafe/degrading sexual activity</li> <li>Those working in brothel forced or coerced into seeing many “customers”</li> <li>Those working in brothel forced/coerced/deceived into prostitution</li> <li>Established evidence of community impact</li> </ul>	<b>A</b>
		Keeping brothel on significant commercial basis
		Involvement in keeping a number of brothels
		Expectation of significant financial or other gain
		Abuse of trust
		Exploitation of those known to be trafficked
		Significant involvement in limiting freedom of those working in brothel
		Grooming of a person to work in the brothel including through cultivation of a dependency on drugs or alcohol
		<b>B</b>
		Keeping/managing premises
		Close involvement with those working in brothel, for example control of finances, choice of clients, working conditions, etc (where offender’s involvement is not as a result of coercion)
		<b>C</b>
		Performs limited function under direction
		Close involvement but engaged by coercion/intimidation/exploitation
<b>Category 2</b>	Factor(s) in category 1 not present	

## STEP TWO

### Starting point and category range

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range on the next page. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out on the next page.

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.

Where there is a sufficient prospect of rehabilitation, a community order with a sex offender treatment programme requirement under section 202 of the Criminal Justice Act 2003 can be a proper alternative to a short or moderate length custodial sentence.

	A	B	C
<b>Category 1</b>	<b>Starting point</b> 5 years' custody	<b>Starting point</b> 3 years' custody	<b>Starting point</b> 1 year's custody
	<b>Category range</b> 3 – 6 years' custody	<b>Category range</b> 2 – 5 years' custody	<b>Category range</b> High level community order – 18 months' custody
<b>Category 2</b>	<b>Starting point</b> 3 years' custody	<b>Starting point</b> 12 months' custody	<b>Starting point</b> Medium level community order
	<b>Category range</b> 2 – 5 years' custody	<b>Category range</b> 26 weeks' – 2 years' custody	<b>Category range</b> Low level community order – High level community order

The table below 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 starting point. **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.

When sentencing appropriate **category 1 offences**, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

### Aggravating factors

#### 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

Failure to comply with current court orders

Offence committed whilst on licence

Deliberate isolation of those working in brothel

Threats made to expose those working in brothel to the authorities (for example, immigration or police), family/friends or others

Harm threatened against the family/friends of those working in brothel

Passport/identity documents removed

Those working in brothel prevented from seeking medical treatment

Food withheld

Those working in brothel passed around by offender and moved to other brothels

Earnings of those working in brothel withheld/kept by offender or evidence of excessive wage reduction or debt bondage, inflated travel or living expenses or unreasonable interest rates

Any steps taken to prevent those working in brothel reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Attempts to dispose of or conceal evidence

Those working in brothel forced or coerced into pornography

Timescale over which operation has been run

### Mitigating factors

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

Remorse

Previous good character and/or exemplary conduct\*

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

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

Demonstration of steps taken to address offending behaviour

\* Previous good character/exemplary conduct is different from having no previous convictions. The more serious the offence, the less the weight which should normally be attributed to this factor. Where previous good character/exemplary conduct has been used to facilitate the offence, this mitigation should not normally be allowed and such conduct may constitute an aggravating factor.

**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 potential 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**

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 offending behaviour.

**STEP SIX****Ancillary orders**

The court must consider whether to make any ancillary orders. The court must also consider what other requirements or provisions may *automatically* apply. Further information is included on page 303.

**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.

# Exposure

## Sexual Offences Act 2003 (section 66)

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**Triable either way**

**Maximum: 2 years' custody**

**Offence range: Fine – 1 year's custody**

For convictions on or after 3 December 2012 (irrespective of the date of commission of the offence), this is a specified offence for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

## STEP ONE

### Determining the offence category

The court should determine the offence category using the table below.

<b>Category 1</b>	Raised harm <b>and</b> raised culpability
<b>Category 2</b>	Raised harm <b>or</b> raised culpability
<b>Category 3</b>	Exposure <b>without</b> raised harm or culpability factors present

The court should determine culpability and harm caused or intended, by reference **only** to the factors below, which comprise the principal factual elements of the offence. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting before making an overall assessment and determining the appropriate offence category.

#### Factors indicating raised harm

Victim followed/pursued
Offender masturbated

#### Factors indicating raised culpability

Specific or previous targeting of a particularly vulnerable victim
Abuse of trust
Use of threats (including blackmail)
Offence racially or religiously aggravated
Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation) or transgender identity (or presumed transgender identity)
Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)

## STEP TWO

### Starting point and category range

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range on the next page. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out on the next page.

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.

Where there is a sufficient prospect of rehabilitation, a community order with a sex offender treatment programme requirement under section 202 of the Criminal Justice Act 2003 can be a proper alternative to a short or moderate length custodial sentence.

<b>Category 1</b>	<b>Starting point</b> 26 weeks' custody
	<b>Category range</b> 12 weeks' – 1 year's custody
<b>Category 2</b>	<b>Starting point</b> High level community order
	<b>Category range</b> Medium level community order – 26 weeks' custody
<b>Category 3</b>	<b>Starting point</b> Medium level community order
	<b>Category range</b> Band A fine – High level community order

The table below 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 starting point. **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.

When sentencing **category 2 offences**, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

When sentencing **category 3 offences**, the court should also consider the community order threshold as follows:

- has the community order threshold been passed?

Aggravating factors	Mitigating factors
<i>Statutory aggravating factors</i>	No previous convictions <b>or</b> no relevant/recent convictions
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	Remorse
Offence committed whilst on bail	Previous good character and/or exemplary conduct*
<i>Other aggravating factors</i>	Age and/or lack of maturity where it affects the responsibility of the offender
Location of offence	Mental disorder or learning disability, particularly where linked to the commission of the offence
Timing of offence	Demonstration of steps taken to address offending behaviour
Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution	
Failure to comply with current court orders	
Offence committed whilst on licence	
Commission of offence whilst under the influence of alcohol or drugs	
Presence of others, especially children	

\* Previous good character/exemplary conduct is different from having no previous convictions. The more serious the offence, the less the weight which should normally be attributed to this factor. Where previous good character/exemplary conduct has been used to facilitate the offence, this mitigation should not normally be allowed and such conduct may constitute an aggravating factor.



**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 potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

**STEP FIVE****Dangerousness**

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to award an extended sentence (section 226A).

**STEP SIX****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 offending behaviour.

**STEP SEVEN****Ancillary orders**

The court must consider whether to make any ancillary orders. The court must also consider what other requirements or provisions may *automatically* apply. Further information is included on page 303.

**STEP EIGHT****Reasons**

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

**STEP NINE****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.

# Voyeurism

## Sexual Offences Act 2003 (section 67)

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**Triable either way**

**Maximum: 2 years' custody**

**Offence range: Fine – 18 months' custody**

For convictions on or after such date (irrespective of the date of commission of the offence), these are specified offences for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

**STEP ONE****Determining the offence category**

The court should determine the offence category using the table below.

<b>Category 1</b>	Raised harm <b>and</b> raised culpability
<b>Category 2</b>	Raised harm <b>or</b> raised culpability
<b>Category 3</b>	Voyeurism <b>without</b> raised harm or culpability factors present

The court should determine culpability and harm caused or intended, by reference **only** to the factors below, which comprise the principal factual elements of the offence. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting before making an overall assessment and determining the appropriate offence category.

<b>Factors indicating raised harm</b>	<b>Factors indicating raised culpability</b>
Image(s) available to be viewed by others	Significant degree of planning
Victim observed or recorded in their own home or residence	Image(s) recorded
	Abuse of trust
	Specific or previous targeting of a particularly vulnerable victim
	Commercial exploitation and/or motivation
	Offence racially or religiously aggravated
	Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation) or transgender identity (or presumed transgender identity)
	Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)

**STEP TWO****Starting point and category range**

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range on the next page. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out on the next page.

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.

Where there is a sufficient prospect of rehabilitation, a community order with a sex offender treatment programme requirement under section 202 of the Criminal Justice Act 2003 can be a proper alternative to a short or moderate length custodial sentence.

<b>Category 1</b>	<b>Starting point</b> 26 weeks' custody
	<b>Category range</b> 12 weeks' – 18 months' custody
<b>Category 2</b>	<b>Starting point</b> High level community order
	<b>Category range</b> Medium level community order – 26 weeks' custody
<b>Category 3</b>	<b>Starting point</b> Medium level community order
	<b>Category range</b> Band A fine – High level community order

The table below 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 starting point. **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.

When sentencing **category 2 offences**, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

When sentencing **category 3 offences**, the court should also consider the community order threshold as follows:

- has the community order threshold been passed?

<b>Aggravating factors</b>	
<i>Statutory aggravating factors</i>	
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	Any steps taken to prevent victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution
Offence committed whilst on bail	Attempts to dispose of or conceal evidence
<i>Other aggravating factors</i>	
Location of offence	<b>Mitigating factors</b>
Timing of offence	No previous convictions <b>or</b> no relevant/recent convictions
Failure to comply with current court orders	Remorse
Offence committed whilst on licence	Previous good character and/or exemplary conduct*
Distribution of images, whether or not for gain	Age and/or lack of maturity where it affects the responsibility of the offender
Placing images where there is the potential for a high volume of viewers	Mental disorder or learning disability, particularly where linked to the commission of the offence
Period over which victim observed	Demonstration of steps taken to address offending behaviour
Period over which images were made or distributed	

\* Previous good character/exemplary conduct is different from having no previous convictions. The more serious the offence, the less the weight which should normally be attributed to this factor. Where previous good character/exemplary conduct has been used to facilitate the offence, this mitigation should not normally be allowed and such conduct may constitute an aggravating factor.

**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 potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

**STEP FIVE****Dangerousness**

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to award an extended sentence (section 226A).

**STEP SIX****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 offending behaviour.

**STEP SEVEN****Ancillary orders**

The court must consider whether to make any ancillary orders. The court must also consider what other requirements or provisions may *automatically* apply. Further information is included on page 303.

**STEP EIGHT****Reasons**

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

**STEP NINE****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.

# Sexual offences – Ancillary orders

This summary of the key provisions is correct as at the date of publication but will be subject to subsequent changes in law. If necessary, seek legal advice.

ANCILLARY ORDER	STATUTORY REFERENCE
<b>Compensation</b> The court must consider making a compensation order in any case in which personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to make an order in such cases.	Section 130 of the Powers of Criminal Courts (Sentencing) Act 2000
<b>Confiscation</b> A confiscation order may be made by the Crown Court in circumstances in which the offender has obtained a financial benefit as a result of, or in connection with, his criminal conduct.	Section 6 and Schedule 2 of the Proceeds of Crime Act 2002
<b>Deprivation of property</b> The court may order the offender is deprived of property used for the purpose of committing, or facilitating the commission of, any offence, or intended for that purpose.	Section 143 of the Powers of Criminal Courts (Sentencing) Act 2000
<b>Disqualification from working with children</b> From 17 June 2013 courts <b>no longer</b> have the power to disqualify offenders from working with children pursuant to the Criminal Justice and Court Services Act 2000.	Schedule 10 of the Safeguarding Vulnerable Groups Act 2006 Safeguarding Vulnerable Groups Act 2006 (Commencement No. 8 and Saving) Order 2012 (SI 2012/2231) Protection of Freedoms Act 2012 (Commencement No. 6) Order 2013 (SI 2013/1180)
<b>Restraining order</b> Following a conviction <i>or an acquittal</i> , a court may make a restraining order for the purpose of protecting the victim or another person from harassment or a fear of violence.	Sections 5 and 5A of the Protection from Harassment Act 1997
<b>Serious crime prevention order (SCPO)</b> An SCPO may be made by the Crown Court in respect of qualifying offenders, if the court is satisfied such an order would protect the public by preventing, restricting or disrupting the involvement of the offender in serious crime.	Section 19 and Schedule 1 of the Serious Crime Act 2007
<b>Sexual offences prevention order (SOPO)</b> A SOPO may be made against qualifying offenders if the court is satisfied such an order is necessary to protect the public or any particular member of the public from serious sexual harm from the offender. The terms of the SOPO must be proportionate to the objective of protecting the public and consistent with the sentence and other ancillary orders, conditions and requirements to which the offender is subject.	Section 104 and Schedules 3 and 5 of the Sexual Offences Act 2003

## AUTOMATIC ORDERS ON CONVICTION

The following requirements or provisions are **not** part of the sentence imposed by the court but apply automatically by operation of law. The role of the court is to inform the offender of the applicable requirements and/or prohibition.

REQUIREMENT OR PROVISION	STATUTORY REFERENCE
<p><b>Notification requirements</b></p> <p>A relevant offender automatically becomes subject to notification requirements, obliging him to notify the police of specified information for a specified period. The court should inform the offender accordingly.</p> <p><i>The operation of the notification requirement is not a relevant consideration in determining the sentence for the offence.</i></p>	<p>Sections 80 to 88 and Schedule 3 of the Sexual Offences Act 2003</p>
<p><b>Protection for children and vulnerable adults</b></p> <p>A statutory scheme pursuant to which offenders <i>will</i> or <i>may</i> be barred from regulated activity relating to children or vulnerable adults, with or without the right to make representations, depending on the offence. The court should inform the offender accordingly.</p>	<p>Section 2 and Schedule 3 of the Safeguarding Vulnerable Groups Act 2006</p> <p>Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria and Miscellaneous Provisions) Regulations 2009 (SI 2009/37) (as amended)</p>

Guidance for offences pre-dating those under the Sexual Offences Act 2003 can be found at [www.sentencingcouncil.org.uk](http://www.sentencingcouncil.org.uk)

# Organisations

## Unauthorised or harmful deposit, treatment or disposal etc of waste

## Illegal discharges to air, land and water

Environmental Protection Act 1990 (section 33)

Environmental Permitting (England and Wales) Regulations 2010 (regulations 12 and 38(1), (2) and (3))

Also relevant, with adjustments, to certain related offences (see page 316)

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Triable either way

Maximum: when tried on indictment: unlimited fine  
when tried summarily: unlimited fine

Offence range: £100 fine – £3 million fine

Use this guideline when the offender is an organisation. If the offender is an individual, please refer to the guideline for individuals.

### Confiscation

Committal to the Crown Court for sentence is mandatory if confiscation (see step two) is to be considered: Proceeds of Crime Act 2002 section 70. In such cases magistrates should state whether they would otherwise have committed for sentence.

Financial orders must be considered in this order: (1) compensation, (2) confiscation, and (3) fine (see Proceeds of Crime Act 2002 section 13).



## **STEP ONE**

### **Compensation**

The court must consider making a compensation order requiring the offender to pay compensation for any personal injury, loss or damage resulting from the offence in such an amount as the court considers appropriate, having regard to the evidence and to the means of the offender.

Where the means of the offender are limited, priority should be given to the payment of compensation over payment of any other financial penalty.

Reasons should be given if a compensation order is not made.

(See section 130 Powers of Criminal Courts (Sentencing) Act 2000)

## **STEP TWO**

### **Confiscation (Crown Court only)**

Confiscation must be considered if either the Crown asks for it or the court thinks that it may be appropriate. Confiscation must be dealt with before any other fine or financial order (except compensation).

(See sections 6 and 13 Proceeds of Crime Act 2002)

**See page 307.**

**STEP THREE****Determining the offence category**

The court should determine the offence category using only the culpability and harm factors in the tables below. The culpability and harm categories are on a sliding scale; there is inevitable overlap between the factors described in adjacent categories. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting before making an overall assessment and determining the appropriate offence category.

Dealing with a **risk of harm** involves consideration of both the likelihood of harm occurring and the extent of it if it does. Risk of harm is less serious than the same actual harm. Where the offence has caused risk of harm but no (or less) actual harm the normal approach is to move down to the next category of harm. This may not be appropriate if either the likelihood or extent of potential harm is particularly high.

Culpability	Harm
<p><b>Deliberate</b> Intentional breach of or flagrant disregard for the law by person(s) whose position of responsibility in the organisation is such that their acts/omissions can properly be attributed to the organisation; <b>OR</b> deliberate failure by organisation to put in place and to enforce such systems as could reasonably be expected in all the circumstances to avoid commission of the offence.</p>	<p><b>Category 1</b></p> <ul style="list-style-type: none"> <li>• Polluting material of a dangerous nature, for example, hazardous chemicals or sharp objects</li> <li>• Major adverse effect or damage to air or water quality, amenity value, or property</li> <li>• Polluting material was noxious, widespread or pervasive with long-lasting effects on human health or quality of life, animal health or flora</li> <li>• Major costs incurred through clean-up, site restoration or animal rehabilitation</li> <li>• Major interference with, prevention or undermining of other lawful activities or regulatory regime due to offence</li> </ul>
<p><b>Reckless</b> Actual foresight of, or wilful blindness to, risk of offending but risk nevertheless taken by person(s) whose position of responsibility in the organisation is such that their acts/omissions can properly be attributed to the organisation; <b>OR</b> reckless failure by organisation to put in place and to enforce such systems as could reasonably be expected in all the circumstances to avoid commission of the offence.</p>	<p><b>Category 2</b></p> <ul style="list-style-type: none"> <li>• Significant adverse effect or damage to air or water quality, amenity value, or property</li> <li>• Significant adverse effect on human health or quality of life, animal health or flora</li> <li>• Significant costs incurred through clean-up, site restoration or animal rehabilitation</li> <li>• Significant interference with or undermining of other lawful activities or regulatory regime due to offence</li> <li>• Risk of category 1 harm</li> </ul>
<p><b>Negligent</b> Failure by the organisation as a whole to take reasonable care to put in place and enforce proper systems for avoiding commission of the offence.</p>	<p><b>Category 3</b></p> <ul style="list-style-type: none"> <li>• Minor, localised adverse effect or damage to air or water quality, amenity value, or property</li> <li>• Minor adverse effect on human health or quality of life, animal health or flora</li> <li>• Low costs incurred through clean-up, site restoration or animal rehabilitation</li> <li>• Limited interference with or undermining of other lawful activities or regulatory regime due to offence</li> <li>• Risk of category 2 harm</li> </ul>
<p><b>Low or no culpability</b> Offence committed with little or no fault on the part of the organisation as a whole, for example by accident or the act of a rogue employee and despite the presence and due enforcement of all reasonably required preventive measures, or where such proper preventive measures were unforeseeably overcome by exceptional events.</p>	<p><b>Category 4</b></p> <ul style="list-style-type: none"> <li>• Risk of category 3 harm</li> </ul>

**STEP FOUR****Starting point and category range**

Having determined the category, the court should refer to the tables on pages 309 to 312. There are four tables of starting points and ranges: one for large organisations, one for medium organisations, one for small organisations and one for micro-organisations. The court should refer to the table that relates to the size of the offending organisation.

The court should use the corresponding starting point to reach a sentence within the category range. The court should then consider further adjustment within the category range for aggravating and mitigating features, set out on page 313.

**General principles to follow in setting a fine**

The court should determine the appropriate level of fine in accordance with section 164 of the Criminal Justice Act 2003, which requires that the fine must reflect the seriousness of the offence and the court to take into account the financial circumstances of the offender.

The level of fine should reflect the extent to which the offender fell below the required standard. The fine should meet, in a fair and proportionate way, the objectives of punishment, deterrence and the removal of gain derived through the commission of the offence; it should not be cheaper to offend than to take the appropriate precautions.

**Obtaining financial information**

Offenders which are companies, partnerships or bodies delivering a public or charitable service, are expected to provide comprehensive accounts for the last three years, to enable the court to make an accurate assessment of its financial status. In the absence of such disclosure, or where the court is not satisfied that it has been given sufficient reliable information, the court will be entitled to draw reasonable inferences as to the offender's means from evidence it has heard and from all the circumstances of the case.

Normally, only information relating to the organisation before the court will be relevant, unless it is demonstrated to the court that the resources of a linked organisation are available and can properly be taken into account.

1. *For companies*: annual accounts. Particular attention should be paid to turnover; profit before tax; directors' remuneration, loan accounts and pension provision; and assets as disclosed by the balance sheet. Most companies are required to file audited accounts at Companies House. **Failure to produce relevant recent accounts on request may properly lead to the conclusion that the company can pay any appropriate fine.**
2. *For partnerships*: annual accounts. Particular attention should be paid to turnover; profit before tax; partners' drawings, loan accounts and pension provision; assets as above. Limited Liability Partnerships (LLPs) may be required to file audited accounts with Companies House. **If adequate accounts are not produced on request, see paragraph 1.**
3. *For local authorities, fire authorities and similar public bodies*: the Annual Revenue Budget ("ARB") is the equivalent of turnover and the best indication of the size of the defendant organisation. It is unlikely to be necessary to analyse specific expenditure or reserves (where relevant) unless inappropriate expenditure is suggested.

4. *For health trusts*: the independent regulator of NHS Foundation Trusts is Monitor. It publishes quarterly reports and annual figures for the financial strength and stability of trusts from which the annual income can be seen, available via [www.monitor-nhsft.gov.uk](http://www.monitor-nhsft.gov.uk). Detailed analysis of expenditure or reserves is unlikely to be called for.
5. *For charities*: it will be appropriate to inspect annual audited accounts. Detailed analysis of expenditure or reserves is unlikely to be called for unless there is a suggestion of unusual or unnecessary expenditure.

At step four, the court will be required to focus on the organisation's annual turnover or equivalent to reach a starting point for a fine. At step six, the court may be required to refer to the other financial factors listed above to ensure that the proposed fine is proportionate.

### Very large organisations

Where a defendant company's turnover or equivalent very greatly exceeds the threshold for large companies, it may be necessary to move outside the suggested range to achieve a proportionate sentence.

### Large

Turnover or equivalent: £50 million and over.

Large	Starting Point	Range
<b>Deliberate</b>		
Category 1	£1,000,000	£450,000 – £3,000,000
Category 2	£500,000	£180,000 – £1,250,000
Category 3	£180,000	£100,000 – £450,000
Category 4	£100,000	£55,000 – £250,000
<b>Reckless</b>		
Category 1	£550,000	£250,000 – £1,500,000
Category 2	£250,000	£100,000 – £650,000
Category 3	£100,000	£60,000 – £250,000
Category 4	£60,000	£35,000 – £160,000
<b>Negligent</b>		
Category 1	£300,000	£140,000 – £750,000
Category 2	£140,000	£60,000 – £350,000
Category 3	£60,000	£35,000 – £150,000
Category 4	£35,000	£22,000 – £100,000
<b>Low / No culpability</b>		
Category 1	£50,000	£25,000 – £130,000
Category 2	£25,000	£14,000 – £70,000
Category 3	£14,000	£10,000 – £40,000
Category 4	£10,000	£7,000 – £25,000

**Medium**

Turnover or equivalent: between £10 million and £50 million.

<b>Medium</b>	<b>Starting Point</b>	<b>Range</b>
<b>Deliberate</b>		
Category 1	£400,000	£170,000 – £1,000,000
Category 2	£170,000	£70,000 – £450,000
Category 3	£70,000	£40,000 – £180,000
Category 4	£40,000	£22,000 – £100,000
<b>Reckless</b>		
Category 1	£220,000	£100,000 – £500,000
Category 2	£100,000	£40,000 – £250,000
Category 3	£40,000	£24,000 – £100,000
Category 4	£24,000	£14,000 – £60,000
<b>Negligent</b>		
Category 1	£120,000	£55,000 – £300,000
Category 2	£55,000	£25,000 – £140,000
Category 3	£25,000	£14,000 – £60,000
Category 4	£14,000	£8,000 – £35,000
<b>Low / No culpability</b>		
Category 1	£20,000	£10,000 – £50,000
Category 2	£10,000	£5,500 – £25,000
Category 3	£5,000	£3,500 – £14,000
Category 4	£3,000	£2,500 – £10,000

See page 311.

## Small

Turnover or equivalent: between £2 million and £10 million.

Small	Starting Point	Range
<b>Deliberate</b>		
Category 1	£100,000	£45,000 – £400,000
Category 2	£45,000	£17,000 – £170,000
Category 3	£17,000	£10,000 – £70,000
Category 4	£10,000	£5,000 – £40,000
<b>Reckless</b>		
Category 1	£55,000	£24,000 – £220,000
Category 2	£24,000	£10,000 – £100,000
Category 3	£10,000	£5,000 – £40,000
Category 4	£5,000	£3,000 – £24,000
<b>Negligent</b>		
Category 1	£30,000	£13,000 – £120,000
Category 2	£13,000	£6,000 – £55,000
Category 3	£6,000	£3,000 – £23,000
Category 4	£3,000	£1,500 – £14,000
<b>Low / No culpability</b>		
Category 1	£5,000	£2,500 – £20,000
Category 2	£2,500	£1,000 – £10,000
Category 3	£1,000	£700 – £5,000
Category 4	£700	£400 – £3,500

See page 312.

**Micro**

Turnover or equivalent: not more than £2 million.

Micro	Starting Point	Range
<b>Deliberate</b>		
Category 1	£50,000	£9,000 – £95,000
Category 2	£22,000	£3,000 – £45,000
Category 3	£9,000	£2,000 – £17,000
Category 4	£5,000	£1,000 – £10,000
<b>Reckless</b>		
Category 1	£30,000	£3,000 – £55,000
Category 2	£12,000	£1,500 – £24,000
Category 3	£5,000	£1,000 – £10,000
Category 4	£3,000	£500 – £5,500
<b>Negligent</b>		
Category 1	£15,000	£1,500 – £30,000
Category 2	£6,500	£1,000 – £13,000
Category 3	£2,500	£500 – £5,500
Category 4	£1,400	£350 – £3,000
<b>Low / No culpability</b>		
Category 1	£2,500	£500 – £5,000
Category 2	£1,000	£350 – £2,400
Category 3	£400	£175 – £1,000
Category 4	£200	£100 – £700

See page 313.

The table below contains a **non-exhaustive** list of 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 starting point. **In particular, relevant recent convictions and/or a history of non-compliance are likely to result in a substantial upward adjustment.** In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness	Factors reducing seriousness or reflecting mitigation
<i>Statutory aggravating factors:</i>	No previous convictions <b>or</b> no relevant/recent convictions
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	Evidence of steps taken to remedy problem
<i>Other aggravating factors include:</i>	Remorse
History of non-compliance with warnings by regulator	Compensation paid voluntarily to remedy harm caused
Location of the offence, for example, near housing, schools, livestock or environmentally sensitive sites	One-off event not commercially motivated
Repeated incidents of offending or offending over an extended period of time, where not charged separately	Little or no financial gain
Deliberate concealment of illegal nature of activity	Effective compliance and ethics programme
Ignoring risks identified by employees or others	Self-reporting, co-operation and acceptance of responsibility
Established evidence of wider/community impact	Good character and/or exemplary conduct
Breach of any order	
Offence committed for financial gain	
Obstruction of justice	

See page 314.



## STEPS FIVE TO SEVEN

The court should now ‘step back’ and, using the factors set out in steps five, six and seven, **review whether the sentence as a whole meets, in a fair way, the objectives of punishment, deterrence and removal of gain derived through the commission of the offence.** At steps five to seven, the court may increase or reduce the proposed fine reached at step four, if necessary moving outside the range.

### STEP FIVE

**Ensure that the combination of financial orders (compensation, confiscation if appropriate, and fine) removes any economic benefit derived from the offending**

The court should remove any economic benefit the offender has derived through the commission of the offence including:

- avoided costs;
- operating savings;
- any gain made as a direct result of the offence.

Where the offender is fined, the amount of economic benefit derived from the offence should normally be added to the fine arrived at in step four. If a confiscation order is made, in considering economic benefit, the court should avoid double recovery.

Economic benefit will not always be an identifiable feature of a case. For example, in some water pollution cases there may be strict liability but very little obvious gain. However, even in these cases there may be some avoidance of cost, for example alarms not installed and maintained, inadequate bunding or security measures not installed. Any costs avoided will be considered as economic benefit.

Where it is not possible to calculate or estimate the economic benefit, the court may wish to draw on information from the enforcing authorities about the general costs of operating within the law.

### STEP SIX

**Check whether the proposed fine based on turnover is proportionate to the means of the offender**

**The combination of financial orders must be sufficiently substantial to have a real economic impact which will bring home to both management and shareholders the need to improve regulatory compliance. Whether the fine will have the effect of putting the offender out of business will be relevant; in some bad cases this may be an acceptable consequence.**

It will be necessary to examine the financial circumstances of the organisation in the round. If an organisation has a small profit margin relative to its turnover, downward adjustment may be needed. If it has a large profit margin, upward adjustment may be needed.

In considering the ability of the offending organisation to pay any financial penalty, the court can take into account **the power to allow time for payment or to order that the amount be paid in instalments.**

**STEP SEVEN****Consider other factors that may warrant adjustment of the proposed fine**

The court should consider any further factors that are relevant to ensuring that the proposed fine is proportionate having regard to the means of the offender and the seriousness of the offence.

**Where the fine will fall on public or charitable bodies, the fine should normally be substantially reduced if the offending organisation is able to demonstrate the proposed fine would have a significant impact on the provision of their services.**

The **non-exhaustive** list below contains additional factual elements the court should consider in deciding whether an increase or reduction to the proposed fine is required:

- fine impairs offender's ability to make restitution to victims;
- impact of fine on offender's ability to improve conditions in the organisation to comply with the law;
- impact of fine on employment of staff, service users, customers and local economy.

**STEP EIGHT****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 NINE****Reduction for guilty pleas**

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

**STEP TEN****Ancillary orders**

In all cases, the court must consider whether to make ancillary orders. These may include:

***Forfeiture of vehicle***

The court may order the forfeiture of a vehicle used in or for the purposes of the commission of the offence in accordance with section 33C of the Environmental Protection Act 1990.

***Deprivation of property***

Where section 33C of the Environmental Protection Act 1990 does not apply, the court may order the offender be deprived of property used to commit crime or intended for that purpose in accordance with section 143 of the Powers of Criminal Courts (Sentencing) Act 2000. In considering whether to make an order under section 143, the court must have regard to the value of the property and the likely effects on the offender of making the order taken together with any other order the court makes.

***Remediation***

Where an offender is convicted of an offence under regulation 38(1), (2) or (3) of the Environmental Permitting (England and Wales) Regulations 2010, a court may order the offender to take steps to remedy the cause of the offence within a specified period in accordance with regulation 44 of the Environmental Permitting (England and Wales) Regulations 2010.

**STEP ELEVEN****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 offending behaviour.

**STEP TWELVE****Reasons**

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

**Other environmental offences**

In sentencing other relevant and analogous environmental offences, the court should refer to the sentencing approach in steps one to three and five to seven of the guideline, **adjusting the starting points and ranges bearing in mind the statutory maxima** for those offences. An indicative list of such offences is set out below.

Offence	Mode of trial	Statutory maxima
Section 1 Control of Pollution (Amendment) Act 1989 – transporting controlled waste without registering	Triable summarily only	<ul style="list-style-type: none"> <li>level 5 fine</li> </ul>
Section 34 Environmental Protection Act 1990 – breach of duty of care	Triable either way	<ul style="list-style-type: none"> <li>when tried on indictment: unlimited fine</li> <li>when tried summarily: level 5 fine</li> </ul>
Section 80 Environmental Protection Act 1990 – breach of an abatement notice	Triable summarily only	<ul style="list-style-type: none"> <li>where the offence is committed on industrial, trade or business premises: £20,000 fine</li> <li>where the offence is committed on non-industrial etc premises: level 5 fine with a further fine of an amount equal to one-tenth of that level for each day on which the offence continues after the conviction</li> </ul>
Section 111 Water Industry Act 1991 – restrictions on use of public sewers	Triable either way	<ul style="list-style-type: none"> <li>when tried on indictment: imprisonment for a term not exceeding two years or a fine or both</li> <li>when tried summarily: a fine not exceeding the statutory maximum and a further fine not exceeding £50 for each day on which the offence continues after conviction</li> </ul>
Offences under the Transfrontier Shipment of Waste Regulations 2007	Triable either way	<ul style="list-style-type: none"> <li>when tried on indictment: a fine or two years imprisonment or both</li> <li>when tried summarily: a fine not exceeding the statutory maximum or three months' imprisonment or both</li> </ul>

# Individuals

## Unauthorised or harmful deposit, treatment or disposal etc of waste

### Illegal discharges to air, land and water

Environmental Protection Act 1990 (section 33)

Environmental Permitting (England and Wales) Regulations 2010 (regulations 12 and 38(1), (2) and (3))

Also relevant, with adjustments, to certain related offences (see page 325)

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Triable either way

Maximum: when tried on indictment: unlimited fine and/or 5 years' custody  
when tried summarily: unlimited fine and/or 6 months' custody

Offence range: conditional discharge – 3 years' custody

Use this guideline when the offender is an individual. If the offender is an organisation, please refer to the guideline for organisations.

#### Confiscation

Committal to the Crown Court for sentence is mandatory if confiscation (see step two) is to be considered: Proceeds of Crime Act 2002 section 70. In such cases magistrates should state whether they would otherwise have committed for sentence.

If a fine is imposed, the financial orders must be considered in this order: (1) compensation, (2) confiscation, and (3) fine (see Proceeds of Crime Act 2002 section 13).

**STEP ONE****Compensation**

The court must consider making a compensation order requiring the offender to pay compensation for any personal injury, loss or damage resulting from the offence in such an amount as the court considers appropriate, having regard to the evidence and to the means of the offender.

Where the means of the offender are limited, priority should be given to the payment of compensation over payment of any other financial penalty.

Reasons should be given if a compensation order is not made.

(See section 130 Powers of Criminal Courts (Sentencing) Act 2000)

**STEP TWO****Confiscation (Crown Court only)**

Confiscation must be considered if either the Crown asks for it or the court thinks that it may be appropriate. Confiscation must be dealt with before any other fine or financial order (except compensation).

(See sections 6 and 13 Proceeds of Crime Act 2002)

**See page 319.**

**STEP THREE****Determining the offence category**

The court should determine the offence category using only the culpability and harm factors in the tables below. The culpability and harm categories are on a sliding scale; there is inevitable overlap between the factors described in adjacent categories. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting before making an overall assessment and determining the appropriate offence category.

Dealing with a **risk of harm** involves consideration of both the likelihood of harm occurring and the extent of it if it does. Risk of harm is less serious than the same actual harm. Where the offence has caused risk of harm but no (or less) actual harm the normal approach is to move down to the next category of harm. This may not be appropriate if either the likelihood or extent of potential harm is particularly high.

Culpability	Harm
<p><b>Deliberate</b> Where the offender intentionally breached, or flagrantly disregarded, the law</p>	<p><b>Category 1</b></p> <ul style="list-style-type: none"> <li>• Polluting material of a dangerous nature, for example, hazardous chemicals or sharp objects</li> <li>• Major adverse effect or damage to air or water quality, amenity value, or property</li> <li>• Polluting material was noxious, widespread or pervasive with long-lasting effects on human health or quality of life, animal health, or flora</li> <li>• Major costs incurred through clean-up, site restoration or animal rehabilitation</li> <li>• Major interference with, prevention or undermining of other lawful activities or regulatory regime due to offence</li> </ul>
<p><b>Reckless</b> Actual foresight of, or wilful blindness to, risk of offending but risk nevertheless taken</p>	<p><b>Category 2</b></p> <ul style="list-style-type: none"> <li>• Significant adverse effect or damage to air or water quality, amenity value, or property</li> <li>• Significant adverse effect on human health or quality of life, animal health or flora</li> <li>• Significant costs incurred through clean-up, site restoration or animal rehabilitation</li> <li>• Significant interference with or undermining of other lawful activities or regulatory regime due to offence</li> <li>• Risk of category 1 harm</li> </ul>
<p><b>Negligent</b> Offence committed through act or omission which a person exercising reasonable care would not commit</p>	<p><b>Category 3</b></p> <ul style="list-style-type: none"> <li>• Minor, localised adverse effect or damage to air or water quality, amenity value, or property</li> <li>• Minor adverse effect on human health or quality of life, animal health or flora</li> <li>• Low costs incurred through clean-up, site restoration or animal rehabilitation</li> <li>• Limited interference with or undermining of other lawful activities or regulatory regime due to offence</li> <li>• Risk of category 2 harm</li> </ul>
<p><b>Low or no culpability</b> Offence committed with little or no fault, for example by genuine accident despite the presence of proper preventive measures, or where such proper preventive measures were unforeseeably overcome by exceptional events</p>	<p><b>Category 4</b></p> <ul style="list-style-type: none"> <li>• Risk of category 3 harm</li> </ul>

## STEP FOUR

### Starting point and category range

Having determined the category, the court should refer to the starting points on page 321 to reach a sentence within the category range. The court should then consider further adjustment within the category range for aggravating and mitigating features, set out on page 322.

### General principles to follow in setting a fine

The court should determine the appropriate level of fine in accordance with section 164 of the Criminal Justice Act 2003, which requires that the fine must reflect the seriousness of the offence and the court to take into account the financial circumstances of the offender.

The level of fine should reflect the extent to which the offender fell below the required standard. The fine should meet, in a fair and proportionate way, the objectives of punishment, deterrence and the removal of gain derived through the commission of the offence; it should not be cheaper to offend than to take the appropriate precautions.

### Obtaining financial information

In setting a fine, the court may conclude that the offender is able to pay any fine imposed unless the offender has supplied any financial information to the contrary. It is for the offender to disclose to the court such data relevant to their financial position as will enable it to assess what they can reasonably afford to pay. If necessary, the court may compel the disclosure of an individual offender's financial circumstances pursuant to section 162 of the Criminal Justice Act 2003. **In the absence of such disclosure, or where the court is not satisfied that it has been given sufficient reliable information, the court will be entitled to draw reasonable inferences as to the offender's means from evidence it has heard and from all the circumstances of the case.**

See page 321.

## Starting points and ranges

Where the range includes a potential sentence of custody, the court should consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

Where the range includes a potential sentence of a community order, the court should consider the community order threshold as follows:

- has the community order threshold been passed?

**However, even where the community order threshold has been passed, a fine will normally be the most appropriate disposal.** Where confiscation is not applied for, consider, if wishing to remove any economic benefit derived through the commission of the offence, combining a fine with a community order.

Offence category	Starting Point	Range
<b>Deliberate</b>		
Category 1	18 months' custody	1 – 3 years' custody
Category 2	1 year's custody	26 weeks' – 18 months' custody
Category 3	Band F fine	Band E fine or medium level community order – 26 weeks' custody
Category 4	Band E fine	Band D fine or low level community order – Band E fine
<b>Reckless</b>		
Category 1	26 weeks' custody	Band F fine or high level community order – 12 months' custody
Category 2	Band F fine	Band E fine or medium level community order – 26 weeks' custody
Category 3	Band E fine	Band D fine or low level community order – Band E fine
Category 4	Band D fine	Band C fine – Band D fine
<b>Negligent</b>		
Category 1	Band F fine	Band E fine or medium level community order – 26 weeks' custody
Category 2	Band E fine	Band D fine or low level community order – Band E fine
Category 3	Band D fine	Band C fine – Band D fine
Category 4	Band C fine	Band B fine – Band C fine
<b>Low / No culpability</b>		
Category 1	Band D fine	Band C fine – Band D fine
Category 2	Band C fine	Band B fine – Band C fine
Category 3	Band B fine	Band A fine – Band B fine
Category 4	Band A fine	Conditional discharge – Band A fine



The table below contains a **non-exhaustive** list of 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 starting point. **In particular, relevant recent convictions and/or a history of non-compliance are likely to result in a substantial upward adjustment.** In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness	Factors reducing seriousness or reflecting personal mitigation
<i>Statutory aggravating factors:</i>	No previous convictions <b>or</b> no relevant/recent convictions
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	Remorse
Offence committed whilst on bail	Compensation paid voluntarily to remedy harm caused
<i>Other aggravating factors include:</i>	Evidence of steps taken to remedy problem
History of non-compliance with warnings by regulator	One-off event not commercially motivated
Location of the offence, for example, near housing, schools, livestock or environmentally sensitive sites	Little or no financial gain
Repeated incidents of offending or offending over an extended period of time, where not charged separately	Self-reporting, co-operation and acceptance of responsibility
Deliberate concealment of illegal nature of activity	Good character and/or exemplary conduct
Ignoring risks identified by employees or others	Mental disorder or learning disability, where linked to the commission of the offence
Established evidence of wider/community impact	Serious medical conditions requiring urgent, intensive or long-term treatment
Breach of any order	Age and/or lack of maturity where it affects the responsibility of the offender
Offence committed for financial gain	Sole or primary carer for dependent relatives
Obstruction of justice	
Offence committed whilst on licence	

See page 323.

## STEPS FIVE AND SIX

Where the sentence is or includes a fine, the court should ‘step back’ and, using the factors set out in steps five and six, **review whether the sentence as a whole meets, in a fair way, the objectives of punishment, deterrence and removal of gain derived through the commission of the offence.** At steps five and six, the court may increase or reduce the proposed fine reached at step four, if necessary moving outside the range.

### STEP FIVE

**Ensure that the combination of financial orders (compensation, confiscation if appropriate, and fine) removes any economic benefit derived from the offending**

The court should remove any economic benefit the offender has derived through the commission of the offence including:

- avoided costs;
- operating savings;
- any gain made as a direct result of the offence.

Where the offender is fined, the amount of economic benefit derived from the offence should normally be added to the fine arrived at in step four. If a confiscation order is made, in considering economic benefit, the court should avoid double recovery.

Economic benefit will not always be an identifiable feature of a case. For example, in some water pollution cases there may be strict liability but very little obvious gain. However, even in these cases there may be some avoidance of cost, for example alarms not installed and maintained, inadequate bunding or security measures not installed. Any costs avoided will be considered as economic benefit.

Where it is not possible to calculate or estimate the economic benefit derived from the offence, the court may wish to draw on information from the enforcing authorities about the general costs of operating within the law.

### STEP SIX

**Consider other factors that may warrant adjustment of the proposed fine**

The court should consider any further factors that are relevant to ensuring that the proposed fine is proportionate having regard to the means of the offender and the seriousness of the offence.

The **non-exhaustive** list below contains additional factual elements the court should consider in deciding whether an increase or reduction to the proposed fine is required:

- fine impairs offender’s ability to make restitution to victims;
- impact of fine on offender’s ability to improve conditions to comply with the law;
- impact of fine on employment of staff, service users, customers and local economy.

**STEP SEVEN****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 EIGHT****Reduction for guilty pleas**

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

**STEP NINE****Ancillary orders**

In all cases, the court must consider whether to make ancillary orders. These may include:

***Disqualification of director***

An offender may be disqualified from being a director of a company in accordance with section 2 of the Company Directors Disqualification Act 1986. The maximum period of disqualification is 15 years (Crown Court) or 5 years (magistrates' court).

***Disqualification from driving***

The court may order disqualification from driving where a vehicle has been used in connection with the commission of the offence (section 147 of the Powers of Criminal Courts (Sentencing) Act 2000).

The court may disqualify an offender from driving on conviction for any offence either in addition to any other sentence or instead of any other sentence (section 146 of the Powers of Criminal Courts (Sentencing) Act 2000).

The court should inform the offender of its intention to disqualify and hear representations.

***Forfeiture of vehicle***

The court may order the forfeiture of a vehicle used in or for the purposes of the commission of the offence in accordance with section 33C of the Environmental Protection Act 1990.

***Deprivation of property***

Where section 33C of the Environmental Protection Act 1990 does not apply, the court may order the offender to be deprived of property used to commit crime or intended for that purpose in accordance with section 143 of the Powers of Criminal Courts (Sentencing) Act 2000. In considering whether to make an order under section 143, the court must have regard to the value of the property and the likely effects on the offender of making the order taken together with any other order the court makes.

***Remediation***

Where an offender is convicted of an offence under regulation 38(1), (2) or (3) of the Environmental Permitting (England and Wales) Regulations 2010, a court may order the offender to take steps to remedy the cause of the offence within a specified period in accordance with regulation 44 of the Environmental Permitting (England and Wales) Regulations 2010.

**STEP TEN****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 offending behaviour.

**STEP ELEVEN****Reasons**

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

**STEP TWELVE****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.

**Other environmental offences**

In sentencing other relevant and analogous environmental offences, the court should refer to the sentencing approach in steps one to three and five and six of the guideline, **adjusting the starting points and ranges bearing in mind the statutory maxima** for those offences. An indicative list of such offences is set out below.

Offence	Mode of trial	Statutory maxima
Section 1 Control of Pollution (Amendment) Act 1989 – transporting controlled waste without registering	Triable summarily only	<ul style="list-style-type: none"> <li>level 5 fine</li> </ul>
Section 34 Environmental Protection Act 1990 – breach of duty of care	Triable either way	<ul style="list-style-type: none"> <li>when tried on indictment: unlimited fine</li> <li>when tried summarily: level 5 fine</li> </ul>
Section 80 Environmental Protection Act 1990 – breach of an abatement notice	Triable summarily only	<ul style="list-style-type: none"> <li>where the offence is committed on industrial, trade or business premises: £20,000 fine</li> <li>where the offence is committed on non-industrial etc premises: level 5 fine with a further fine of an amount equal to one-tenth of that level for each day on which the offence continues after the conviction</li> </ul>
Section 111 Water Industry Act 1991 – restrictions on use of public sewers	Triable either way	<ul style="list-style-type: none"> <li>when tried on indictment: imprisonment for a term not exceeding two years or a fine or both</li> <li>when tried summarily: a fine not exceeding the statutory maximum and a further fine not exceeding £50 for each day on which the offence continues after conviction</li> </ul>
Offences under the Transfrontier Shipment of Waste Regulations 2007	Triable either way	<ul style="list-style-type: none"> <li>when tried on indictment: a fine or two years imprisonment or both</li> <li>when tried summarily: a fine not exceeding the statutory maximum or three months' imprisonment or both</li> </ul>

# Environmental offences – Fine bands and community orders

## FINE BANDS

In this guideline, fines are expressed as one of six fine bands (A, B, C, D, E or F).

Fine Band	Starting point ( <i>applicable to all offenders</i> )	Category range ( <i>applicable to all offenders</i> )
<b>Band A</b>	50% of relevant weekly income	25–75% of relevant weekly income
<b>Band B</b>	100% of relevant weekly income	75–125% of relevant weekly income
<b>Band C</b>	150% of relevant weekly income	125–175% of relevant weekly income
<b>Band D</b>	250% of relevant weekly income	200–300% of relevant weekly income
<b>Band E</b>	400% of relevant weekly income	300–500% of relevant weekly income
<b>Band F</b>	600% of relevant weekly income	500–700% of relevant weekly income

Band F is provided as an alternative to a community order or custody in the context of this guideline.

## COMMUNITY ORDERS

In this guideline, community sentences are expressed as one of three levels (low, medium or 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
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 one or more of: <ul style="list-style-type: none"> <li>• 40–80 hours unpaid work;</li> <li>• prohibited activity requirement;</li> <li>• curfew requirement within the lowest range (for example, up to 12 hours per day for a few weeks).</li> </ul>	Suitable requirements might include one or more of: <ul style="list-style-type: none"> <li>• greater number of hours of unpaid work (for example, 80–150 hours);</li> <li>• prohibited activity requirement.</li> <li>• an activity requirement in the middle range (20–30 days);</li> <li>• curfew requirement within the middle range (for example, up to 12 hours for 2–3 months).</li> </ul>	Suitable requirements might include one or more of: <ul style="list-style-type: none"> <li>• 150–300 hours unpaid work;</li> <li>• activity requirement up to the maximum of 60 days;</li> <li>• curfew requirement up to 12 hours per day for 4–6 months;</li> <li>• exclusion order lasting in the region of 12 months.</li> </ul>

# Fraud

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## **Fraud by false representation, fraud by failing to disclose information, fraud by abuse of position**

Fraud Act 2006 (section 1)

**Triable either way**

## **Conspiracy to defraud**

Common law

**Triable on indictment only**

**Maximum: 10 years' custody**

**Offence range: Discharge – 8 years' custody**

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## **False accounting**

Theft Act 1968 (section 17)

**Triable either way**

**Maximum: 7 years' custody**

**Offence range: Discharge – 6 years and 6 months' custody**

**STEP ONE****Determining the offence category**

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

The level of **culpability** is determined by weighing up all the factors of the case to determine the offender's role and the extent to which the offending was planned and the sophistication with which it was carried out.

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

A leading role where offending is part of a group activity

Involvement of others through pressure, influence

Abuse of position of power or trust or responsibility

Sophisticated nature of offence/significant planning

Fraudulent activity conducted over sustained period of time

Large number of victims

Deliberately targeting victim on basis of vulnerability

**B – Medium culpability**

Other cases where characteristics for categories A or C are not present

A significant role where offending is part of a group activity

**C – Lesser culpability**

Involved through coercion, intimidation or exploitation

Not motivated by personal gain

Peripheral role in organised fraud

Opportunistic 'one-off' offence; very little or no planning

Limited awareness or understanding of the extent of fraudulent activity

**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.**

**Harm** is initially assessed by the actual, intended or risked loss as may arise from the offence.

The values in the table below are to be used for **actual** or **intended** loss only.

Intended loss relates to offences where circumstances prevent the actual loss that is intended to be caused by the fraudulent activity.

**Risk of loss** (for instance in mortgage frauds) involves consideration of both the likelihood of harm occurring and the extent of it if it does. Risk of loss is less serious than actual or intended loss. Where the offence has caused risk of loss but no (or much less) actual loss the normal approach is to move down to the corresponding point in the next category. This may not be appropriate if either the likelihood or extent of risked loss is particularly high.

Harm A – Loss caused or intended		
<b>Category 1</b>	£500,000 or more	Starting point based on £1 million
<b>Category 2</b>	£100,000 – £500,000 <b>or</b> Risk or category 1 harm	Starting point based on £300,000
<b>Category 3</b>	£20,000 – £100,000 <b>or</b> Risk of category 2 harm	Starting point based on £50,000
<b>Category 4</b>	£5,000 – £20,000 <b>or</b> Risk of category 3 harm	Starting point based on £12,500
<b>Category 5</b>	Less than £5,000 <b>or</b> Risk of category 4 harm	Starting point based on £2,500
<b>Risk of category 5 harm, move down the range within the category</b>		

Harm B – Victim impact demonstrated by one or more of the following:	
The court should then take into account the level of harm caused to the victim(s) or others to determine whether it warrants the sentence being moved up to the corresponding point in the next category or further up the range of the initial category.	
<b>High impact</b> – move up a category; if in category 1 move up the range	
	Serious detrimental effect on the victim whether financial or otherwise, for example substantial damage to credit rating
	Victim particularly vulnerable (due to factors including but not limited to their age, financial circumstances, mental capacity)
<b>Medium impact</b> – move upwards within the category range	
	Considerable detrimental effect on the victim whether financial or otherwise
<b>Lesser impact</b> – no adjustment	
	Some detrimental impact on victim, whether financial or otherwise



## STEP TWO

### Starting point and category range

Having determined the category at step one, the court should use the appropriate starting point (as adjusted in accordance with step one above) to reach a sentence within the category range in the table below. The starting point applies to all offenders irrespective of plea or previous convictions.

Where the value is larger or smaller than the amount on which the starting point is based, this should lead to upward or downward adjustment as appropriate.

**Where the value greatly exceeds the amount of the starting point in category 1, it may be appropriate to move outside the identified range.**

**TABLE 1**  
**Section 1 Fraud Act 2006**  
**conspiracy to defraud**  
Maximum: 10 years' custody

Harm	Culpability		
	A	B	C
<b>Category 1</b> £500,000 or more	<b>Starting point</b> 7 years' custody	<b>Starting point</b> 5 years' custody	<b>Starting point</b> 3 years' custody
Starting point based on £1 million	<b>Category range</b> 5 – 8 years' custody	<b>Category range</b> 3 – 6 years' custody	<b>Category range</b> 18 months' – 4 years' custody
<b>Category 2</b> £100,000–£500,000	<b>Starting point</b> 5 years' custody	<b>Starting point</b> 3 years' custody	<b>Starting point</b> 18 months' custody
Starting point based on £300,000	<b>Category range</b> 3 – 6 years' custody	<b>Category range</b> 18 months' – 4 years' custody	<b>Category range</b> 26 weeks' – 3 years' custody
<b>Category 3</b> £20,000 - £100,000	<b>Starting point</b> 3 years' custody	<b>Starting point</b> 18 months' custody	<b>Starting point</b> 26 weeks' custody
Starting point based on £50,000	<b>Category range</b> 18 months' – 4 years' custody	<b>Category range</b> 26 weeks' – 3 years' custody	<b>Category range</b> Medium level community order – 1 year's custody
<b>Category 4</b> £5,000- £20,000	<b>Starting point</b> 18 months' custody	<b>Starting point</b> 26 weeks' custody	<b>Starting point</b> Medium level community order
Starting point based on £12,500	<b>Category range</b> 26 weeks' – 3 years' custody	<b>Category range</b> Medium level community order – 1 year's custody	<b>Category range</b> Band B fine – High level community order
<b>Category 5</b> Less than £5,000	<b>Starting point</b> 36 weeks' custody	<b>Starting point</b> Medium level community order	<b>Starting point</b> Band B fine
Starting point based on £2,500	<b>Category range</b> High level community order – 1 year's custody	<b>Category range</b> Band B fine – 26 weeks' custody	<b>Category range</b> Discharge – Medium level community order

**TABLE 2**  
**Section 17 Theft Act 1968: false accounting**  
 Maximum: 7 years' custody

Harm	Culpability		
	A	B	C
<b>Category 1</b> £500,000 or more	<b>Starting point</b> 5 years 6 months' custody	<b>Starting point</b> 4 years' custody	<b>Starting point</b> 2 years 6 months' custody
Starting point based on £1 million	<b>Category range</b> 4 years' – 6 years 6 months' custody	<b>Category range</b> 2 years 6 months' – 5 years' custody	<b>Category range</b> 15 months' – 3 years 6 months' custody
<b>Category 2</b> £100,000–£500,000	<b>Starting point</b> 4 years' custody	<b>Starting point</b> 2 years 6 months' custody	<b>Starting point</b> 15 months' custody
Starting point based on £300,000	<b>Category range</b> 2 years 6 months' – 5 years' custody	<b>Category range</b> 15 months' – 3 years 6 months' custody	<b>Category range</b> 26 weeks' – 2 years 6 months' custody
<b>Category 3</b> £20,000–£100,000	<b>Starting point</b> 2 years 6 months' custody	<b>Starting point</b> 15 months' custody	<b>Starting point</b> High level community order
Starting point based on £50,000	<b>Category range</b> 15 months' – 3 years 6 months' custody	<b>Category range</b> High level community order – 2 years 6 months' custody	<b>Category range</b> Low level community order – 36 weeks' custody
<b>Category 4</b> £5,000–£20,000	<b>Starting point</b> 15 months' custody	<b>Starting point</b> High level community order	<b>Starting point</b> Low level community order
Starting point based on £12,500	<b>Category range</b> High level community order – 2 years 6 months' custody	<b>Category range</b> Low level community order – 36 weeks' custody	<b>Category range</b> Band B fine – Medium level community order
<b>Category 5</b> Less than £5,000	<b>Starting point</b> 26 weeks' custody	<b>Starting point</b> Low level community order	<b>Starting point</b> Band B fine
Starting point based on £2,500	<b>Category range</b> Medium level community order – 36 weeks' custody	<b>Category range</b> Band B fine – Medium level community order	<b>Category range</b> Discharge – Low level community order

See page 332.

The table below 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.

Consecutive sentences for multiple offences may be appropriate where large sums are involved.

#### 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:*

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

Attempts to conceal/dispose of evidence

Established evidence of community/wider impact

Failure to comply with current court orders

Offence committed on licence

Offences taken into consideration

Failure to respond to warnings about behaviour

Offences committed across borders

Blame wrongly placed on others

#### Factors reducing seriousness or reflecting personal mitigation

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

Remorse

Good character and/or exemplary conduct

Little or no prospect of success

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

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

Lapse of time since apprehension where this does not arise from the conduct of the offender

Mental disorder or learning disability

Sole or primary carer for dependent relatives

Offender co-operated with investigation, made early admissions and/or voluntarily reported offending

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

Activity originally legitimate

See page 333.

**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 potential 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**

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.

**STEP SIX****Confiscation, compensation and ancillary orders**

The court must proceed with a view to making a confiscation order if it is asked to do so by the prosecutor or if the court believes it is appropriate for it to do so.

Where the offence has resulted in loss or damage the court must consider whether to make a compensation order.

If the court makes both a confiscation order and an order for compensation and the court believes the offender will not have sufficient means to satisfy both orders in full, the court must direct that the compensation be paid out of sums recovered under the confiscation order (section 13 of the Proceeds of Crime Act 2002).

The court may also consider whether to make ancillary orders. These may include a deprivation order, a financial reporting order, a serious crime prevention order and disqualification from acting as a company director.

**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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# Possessing, making or supplying articles for use in fraud

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## Possession of articles for use in frauds

Fraud Act 2006 (section 6)

**Triable either way**

**Maximum: 5 years' custody**

**Offence range: Band A fine – 3 years' custody**

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## Making or supplying articles for use in frauds

Fraud Act 2006 (section 7)

**Triable either way**

**Maximum: 10 years' custody**

**Offence range: Band C fine – 7 years' custody**

## STEP ONE

### Determining the offence category

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

The level of **culpability** is determined by weighing up all the factors of the case to determine the offender's role and the extent to which the offending was planned and the sophistication with which it was carried out.

#### Culpability demonstrated by one or more of the following:

##### A – High culpability

- A leading role where offending is part of a group activity
- Involvement of others through pressure, influence
- Abuse of position of power or trust or responsibility
- Sophisticated nature of offence/significant planning
- Fraudulent activity conducted over sustained period of time
- Articles deliberately designed to target victims on basis of vulnerability

##### B – Medium culpability

- Other cases where characteristics for categories A or C are not present
- A significant role where offending is part of a group activity

##### C – Lesser culpability

- Performed limited function under direction
- Involved through coercion, intimidation or exploitation
- Not motivated by personal gain
- Opportunistic 'one-off' offence; very little or no planning
- Limited awareness or understanding of extent of fraudulent activity

**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.**

#### Harm

This guideline refers to preparatory offences where no substantive fraud has been committed. The level of **harm** is determined by weighing up all the factors of the case to determine the harm that would be caused if the article(s) were used to commit a substantive offence.

##### Greater harm

- Large number of articles created/supplied/in possession
- Article(s) have potential to facilitate fraudulent acts affecting large number of victims
- Article(s) have potential to facilitate fraudulent acts involving significant sums
- Use of third party identities
- Offender making considerable gain as result of the offence

##### Lesser harm

- All other offences

## STEP TWO

### Starting point and category range

Having determined the category at step one, the court should use the appropriate starting point to reach a sentence within the category range in the table below. The starting point applies to all offenders irrespective of plea or previous convictions.

#### Section 6 Fraud Act 2006: Possessing articles for use in fraud

Maximum: 5 years' custody

Harm	Culpability		
	A	B	C
Greater	<b>Starting point</b> 18 months' custody	<b>Starting point</b> 36 weeks' custody	<b>Starting point</b> High level community order
	<b>Category range</b> 36 weeks' custody – 3 years' custody	<b>Category range</b> High level community order – 2 years' custody	<b>Category range</b> Medium level community order – 26 weeks' custody
Lesser	<b>Starting point</b> 26 weeks' custody	<b>Starting point</b> Medium level community order	<b>Starting point</b> Band B fine
	<b>Category range</b> High level community order – 18 months' custody	<b>Category range</b> Low level community order – 26 weeks' custody	<b>Category range</b> Band A fine – Medium level community order

#### Section 7 Fraud Act 2006: Making or adapting or supplying articles for use in fraud

Maximum: 10 years' custody

Harm	Culpability		
	A	B	C
Greater	<b>Starting point</b> 4 years 6 months' custody	<b>Starting point</b> 2 years 6 months' custody	<b>Starting point</b> 1 year's custody
	<b>Category range</b> 3 – 7 years' custody	<b>Category range</b> 18 months' – 5 years' custody	<b>Category range</b> High level community order – 3 years' custody
Lesser	<b>Starting point</b> 2 years' custody	<b>Starting point</b> 36 weeks' custody	<b>Starting point</b> Medium level community order
	<b>Category range</b> 26 weeks' – 4 years' custody	<b>Category range</b> Low level community order – 2 years' custody	<b>Category range</b> Band C fine – 26 weeks' custody



The table below 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 starting point

Consecutive sentences for multiple offences may be appropriate where large sums are involved.

#### 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:*

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

Attempts to conceal/dispose of evidence

Established evidence of community/wider impact

Failure to comply with current court orders

Offence committed on licence

Offences taken into consideration

Failure to respond to warnings about behaviour

Offences committed across borders

Blame wrongly placed on others

#### Factors reducing seriousness or reflecting personal mitigation

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

Remorse

Good character and/or exemplary conduct

Little or no prospect of success

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

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

Lapse of time since apprehension where this does not arise from the conduct of the offender

Mental disorder or learning disability

Sole or primary carer for dependent relatives

Offender co-operated with investigation, made early admissions and/or voluntarily reported offending

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

Activity originally legitimate

See page 339.

**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 potential 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**

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.

**STEP SIX****Confiscation, compensation and ancillary orders**

The court must proceed with a view to making a confiscation order if it is asked to do so by the prosecutor or if the court believes it is appropriate for it to do so.

Where the offence has resulted in loss or damage the court must consider whether to make a compensation order.

If the court makes both a confiscation order and an order for compensation and the court believes the offender will not have sufficient means to satisfy both orders in full, the court must direct that the compensation be paid out of sums recovered under the confiscation order (section 13 of the Proceeds of Crime Act 2002).

The court may also consider whether to make any 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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# Revenue fraud

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## Fraud

Conspiracy to defraud (common law)

**Triable on indictment only**

Fraud Act 2006 (section 1)

**Triable either way**

**Maximum: 10 years' custody**

**Offence range: Low level community order – 8 years' custody**

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## False accounting

Theft Act 1968 (section 17)

## Fraudulent evasion of VAT; False statement for VAT purposes; Conduct amounting to an offence

Value Added Tax Act 1994 (section 72)

## Fraudulent evasion of income tax

Taxes Management Act 1970 (section 106A)

## Fraudulent evasion of excise duty; Improper importation of goods

Customs and Excise Management Act 1979 (sections 50, 170 and 170B)

**Triable either way**

**Maximum: 7 years' custody**

**Offence range: Band C fine – 6 years and 6 months' custody**

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## Fraud

Cheat the public revenue (common law)

**Triable on indictment only**

**Maximum: Life imprisonment**

**Offence range: 3 – 17 years' custody**

**STEP ONE****Determining the offence category**

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

The level of **culpability** is determined by weighing up all the factors of the case to determine the offender's role and the extent to which the offending was planned and the sophistication with which it was carried out.

**Culpability demonstrated by one or more of the following:**

**A – High culpability**

A leading role where offending is part of a group activity

Involvement of others through pressure/influence

Abuse of position of power or trust or responsibility

Sophisticated nature of offence/significant planning

Fraudulent activity conducted over sustained period of time

**B – Medium culpability**

Other cases where characteristics for categories A or C are not present

A significant role where offending is part of a group activity

**C – Lesser culpability**

Involved through coercion, intimidation or exploitation

Not motivated by personal gain

Opportunistic 'one-off' offence; very little or no planning

Performed limited function under direction

Limited awareness or understanding of extent of fraudulent activity

**Harm – Gain/intended gain to offender or loss/intended loss to HMRC**

**Category 1**

£50 million or more

Starting point based on £80 million

**Category 2**

£10 million–£50 million

Starting point based on £30 million

**Category 3**

£2 million–£10 million

Starting point based on £5 million

**Category 4**

£500,000–£2 million

Starting point based on £1 million

**Category 5**

£100,000–£500,000

Starting point based on £300,000

**Category 6**

£20,000–£100,000

Starting point based on £50,000

**Category 7**

Less than £20,000

Starting point based on £12,500

**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.**

**STEP TWO****Starting point and category range**

Having determined the category at step one, the court should use the appropriate starting point to reach a sentence within the category range in the table below. The starting point applies to all offenders irrespective of plea or previous convictions.

Where the value is larger or smaller than the amount on which the starting point is based, this should lead to upward or downward adjustment as appropriate.

**Where the value greatly exceeds the amount of the starting point in category 1, it may be appropriate to move outside the identified range.**

**TABLE 1**

**Section 1 Fraud Act 2006  
Conspiracy to defraud (common law)**

Maximum: 10 years' custody

For offences where the value of the fraud is over £2 million refer to the corresponding category in Table 3 subject to the maximum sentence of 10 years for this offence.

Harm	Culpability		
	A	B	C
<b>Category 4</b> £500,000–£2 million	<b>Starting point</b> 7 years' custody	<b>Starting point</b> 5 years' custody	<b>Starting point</b> 3 years' custody
Starting point based on £1 million	<b>Category range</b> 5 – 8 years' custody	<b>Category range</b> 3 – 6 years' custody	<b>Category range</b> 18 months' – 4 years' custody
<b>Category 5</b> £100,000–£500,000	<b>Starting point</b> 5 years' custody	<b>Starting point</b> 3 years' custody	<b>Starting point</b> 18 months' custody
Starting point based on £300,000	<b>Category range</b> 3 – 6 years' custody	<b>Category range</b> 18 months' – 4 years' custody	<b>Category range</b> 26 weeks' – 3 years' custody
<b>Category 6</b> £20,000–£100,000	<b>Starting point</b> 3 years' custody	<b>Starting point</b> 18 months' custody	<b>Starting point</b> 26 weeks' custody
Starting point based on £50,000	<b>Category range</b> 18 months' – 4 years' custody	<b>Category range</b> 26 weeks' – 3 years' custody	<b>Category range</b> Medium level community order – 1 year's custody
<b>Category 7</b> Less than £20,000	<b>Starting point</b> 18 months' custody	<b>Starting point</b> 36 weeks' custody	<b>Starting point</b> Medium level community order
Starting point based on £12,500	<b>Category range</b> 36 weeks' – 3 years' custody	<b>Category range</b> Medium level community order – 18 months' custody	<b>Category range</b> Low level community order – High level community order

TABLE 2

## Section 17 Theft Act 1968: False Accounting

## Section 72(1) Value Added Tax Act 1994: Fraudulent evasion of VAT

## Section 72(3) Value Added Tax Act 1994: False statement for VAT purposes

## Section 72(8) Value Added Tax Act 1994: Conduct amounting to an offence

## Section 106(a) Taxes Management Act 1970: Fraudulent evasion of income tax

## Section 170(1)(a)(i), (ii), (b), 170(2)(a), 170B Customs and Excise Management Act 1979: Fraudulent evasion of excise duty

## Section 50(1)(a), (2) Customs and Excise Management Act 1979: Improper importation of goods

Maximum: 7 years' custody

Harm	Culpability		
	A	B	C
<b>Category 4</b> £500,000–£2 million	<b>Starting point</b> 5 years 6 months' custody	<b>Starting point</b> 4 years' custody	<b>Starting point</b> 2 years 6 months' custody
Starting point based on £1 million	<b>Category range</b> 4 years' – 6 years 6 months' custody	<b>Category range</b> 2 years 6 months' – 5 years' custody	<b>Category range</b> 15 months' – 3 years 6 months' custody
<b>Category 5</b> £100,000–£500,000	<b>Starting point</b> 4 years' custody	<b>Starting point</b> 2 years 6 months' custody	<b>Starting point</b> 15 months' custody
Starting point based on £300,000	<b>Category range</b> 2 years 6 months' – 5 years' custody	<b>Category range</b> 15 months' – 3 years 6 months' custody	<b>Category range</b> 26 weeks' – 2 years 6 months' custody
<b>Category 6</b> £20,000–£100,000	<b>Starting point</b> 2 years 6 months' custody	<b>Starting point</b> 15 months' custody	<b>Starting point</b> High level community order
Starting point based on £50,000	<b>Category range</b> 15 months' – 3 years 6 months' custody	<b>Category range</b> High level community order - 2 years 6 months' custody	<b>Category range</b> Low level community order – 36 weeks' custody
<b>Category 7</b> Less than £20,000	<b>Starting point</b> 15 months' custody	<b>Starting point</b> 26 weeks' custody	<b>Starting point</b> Medium level community order
Starting point based on £12,500	<b>Category range</b> 26 weeks' – 2 years 6 months' custody	<b>Category range</b> Medium level community order – 15 months' custody	<b>Category range</b> Band C fine – High level community order

See page 345.

**TABLE 3**  
**Cheat the Revenue (common law)**  
 Maximum: Life imprisonment

Where the offending is on the most serious scale, involving sums significantly higher than the starting point in category 1, sentences of 15 years and above may be appropriate depending on the role of the offender. In cases involving sums below £2 million the court should refer to Table 1.

Harm	Culpability		
	A	B	C
<b>Category 1</b> £50 million or more	<b>Starting point</b> 12 years' custody	<b>Starting point</b> 8 years' custody	<b>Starting point</b> 6 years' custody
Starting point based on £80 million	<b>Category range</b> 10 – 17 years' custody	<b>Category range</b> 7 – 12 years' custody	<b>Category range</b> 4 – 8 years' custody
<b>Category 2</b> £10 million–£50 million	<b>Starting point</b> 10 years' custody	<b>Starting point</b> 7 years' custody	<b>Starting point</b> 5 years' custody
Starting point based on £30 million	<b>Category range</b> 8 – 13 years' custody	<b>Category range</b> 5 – 9 years' custody	<b>Category range</b> 3 – 6 years' custody
<b>Category 3</b> £2 million–£10 million	<b>Starting point</b> 8 years' custody	<b>Starting point</b> 6 years' custody	<b>Starting point</b> 4 years' custody
Starting point based on £5 million	<b>Category range</b> 6 – 10 years' custody	<b>Category range</b> 4 – 7 years' custody	<b>Category range</b> 3 – 5 years' custody

See page 346.



The table below 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 any further upward or downward adjustment from the starting point.

Consecutive sentences for multiple offences may be appropriate where large sums are involved.

#### 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:*

Involves multiple frauds

Number of false declarations

Attempts to conceal/dispose of evidence

Failure to comply with current court orders

Offence committed on licence

Offences taken into consideration

Failure to respond to warnings about behaviour

Blame wrongly placed on others

Damage to third party (for example as a result of identity theft)

Dealing with goods with an additional health risk

Disposing of goods to under age purchasers

#### Factors reducing seriousness or reflecting personal mitigation

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

Remorse

Good character and/or exemplary conduct

Little or no prospect of success

Serious medical condition requiring urgent, intensive or long term treatment

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

Lapse of time since apprehension where this does not arise from the conduct of the offender

Mental disorder or learning disability

Sole or primary carer for dependent relatives

Offender co-operated with investigation, made early admissions and/or voluntarily reported offending

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

Activity originally legitimate

See page 347.

**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 potential 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**

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.

**STEP SIX****Confiscation, compensation and ancillary orders**

The court must proceed with a view to making a confiscation order if it is asked to do so by the prosecutor or if the court believes it is appropriate for it to do so.

Where the offence has resulted in loss or damage the court must consider whether to make a compensation order.

If the court makes both a confiscation order and an order for compensation and the court believes the offender will not have sufficient means to satisfy both orders in full, the court must direct that the compensation be paid out of sums recovered under the confiscation order (section 13 of the Proceeds of Crime Act 2002).

The court may also consider whether to make ancillary orders. These may include a deprivation order, a financial reporting order, a serious crime prevention order and disqualification from acting as a company director.

**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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# Benefit fraud

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## Dishonest representations for obtaining benefit etc

Social Security Administration Act 1992 (section 111A)

## Tax Credit fraud

Tax Credits Act 2002 (section 35)

## False accounting

Theft Act 1968 (section 17)

### Triable either way

**Maximum: 7 years' custody**

**Offence range: Discharge – 6 years 6 months' custody**

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## False representations for obtaining benefit etc

Social Security Administration Act 1992 (section 112)

### Triable summarily only

**Maximum: Level 5 fine and/or 3 months' custody**

**Offence range: Discharge – 12 weeks' custody**

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## Fraud by false representation, fraud by failing to disclose information, fraud by abuse of position

Fraud Act 2006 (section 1)

Triable either way

## Conspiracy to defraud

Common law

Triable on indictment only

**Maximum: 10 years' custody**

**Offence range: Discharge – 8 years' custody**

**STEP ONE****Determining the offence category**

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

The level of **culpability** is determined by weighing up all the factors of the case to determine the offender's role and the extent to which the offending was planned and the sophistication with which it was carried out.

**Culpability demonstrated by one or more of the following:**

**A – High culpability**

A leading role where offending is part of a group activity

Involvement of others through pressure/influence

Abuse of position of power or trust or responsibility

Sophisticated nature of offence/significant planning

**B – Medium culpability**

Other cases where characteristics for categories A or C are not present

Claim not fraudulent from the outset

A significant role where offending is part of a group activity

**C – Lesser culpability**

Involved through coercion, intimidation or exploitation

Performed limited function under direction

**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.**

**Harm – Amount obtained or intended to be obtained****Category 1**

£500,000–£2 million

Starting point based on £1 million

**Category 2**

£100,000–£500,000

Starting point based on £300,000

**Category 3**

£50,000–£100,000

Starting point based on £75,000

**Category 4**

£10,000–£50,000

Starting point based on £30,000

**Category 5**

£2,500–£10,000

Starting point based on £5,000

**Category 6**

Less than £2,500

Starting point based on £1,000

**STEP TWO****Starting point and category range**

Having determined the category at step one, the court should use the appropriate starting point to reach a sentence within the category range in the table below. The starting point applies to all offenders irrespective of plea or previous convictions.

Where the value is larger or smaller than the amount on which the starting point is based, this should lead to upward or downward adjustment as appropriate.

**Where the value greatly exceeds the amount of the starting point in category 1, it may be appropriate to move outside the identified range.**

**TABLE 1**

**Section 111A Social Security Administration Act 1992: Dishonest representations to obtain benefit etc**

**Section 35 Tax Credits Act 2002: Tax Credit fraud**

**Section 17 Theft Act 1968: False accounting**

Maximum: 7 years' custody

Harm	Culpability		
	A	B	C
<b>Category 1</b> £500,000 or more	<b>Starting point</b> 5 years 6 months' custody	<b>Starting point</b> 4 years' custody	<b>Starting point</b> 2 years 6 months' custody
Starting point based on £1 million	<b>Category range</b> 4 years' – 6 years 6 months' custody	<b>Category range</b> 2 years 6 months' – 5 years' custody	<b>Category range</b> 15 months' – 3 years 6 months' custody
<b>Category 2</b> £100,000–£500,000	<b>Starting point</b> 4 years' custody	<b>Starting point</b> 2 years 6 months' custody	<b>Starting point</b> 1 year's custody
Starting point based on £300,000	<b>Category range</b> 2 years 6 months' – 5 years' custody	<b>Category range</b> 15 months' – 3 years 6 months' custody	<b>Category range</b> 26 weeks' – 2 years 6 months' custody
<b>Category 3</b> £50,000–£100,000	<b>Starting point</b> 2 years 6 months' custody	<b>Starting point</b> 1 year's custody	<b>Starting point</b> 26 weeks' custody
Starting point based on £75,000	<b>Category range</b> 2 years' – 3 years 6 months' custody	<b>Category range</b> 26 weeks' – 2 years 6 months' custody	<b>Category range</b> High level community order – 36 weeks' custody
<b>Category 4</b> £10,000–£50,000	<b>Starting point</b> 18 months' custody	<b>Starting point</b> 36 weeks' custody	<b>Starting point</b> Medium level community order
Starting point based on £30,000	<b>Category range</b> 36 weeks' – 2 years 6 months' custody	<b>Category range</b> Medium level community order – 21 months' custody	<b>Category range</b> Low level community order – 26 weeks' custody
<b>Category 5</b> £2,500–£10,000	<b>Starting point</b> 36 weeks' custody	<b>Starting point</b> Medium level community order	<b>Starting point</b> Low level community order
Starting point based on £5,000	<b>Category range</b> Medium level community order – 18 months' custody	<b>Category range</b> Low level community order – 26 weeks' custody	<b>Category range</b> Band B fine – Medium level community order
<b>Category 6</b> Less than £2,500	<b>Starting point</b> Medium level community order	<b>Starting point</b> Low level community order	<b>Starting point</b> Band A fine
Starting point based on £1,000	<b>Category range</b> Low level community order – 26 weeks' custody	<b>Category range</b> Band A fine – Medium level community order	<b>Category range</b> Discharge – Band B fine

**TABLE 2**  
**Section 112 Social Security Administration Act 1992: False representations for obtaining benefit etc**  
 Maximum: Level 5 fine and/or 3 months' custody

Harm	Culpability		
	A	B	C
<b>Category 5</b> Above £2,500	<b>Starting point</b> High level community order	<b>Starting point</b> Medium level community order	<b>Starting point</b> Low level community order
Starting point based on £5,000	<b>Category range</b> Medium level community order – 12 weeks' custody	<b>Category range</b> Band B fine – High level community order	<b>Category range</b> Band A fine – Medium level community order
<b>Category 6</b> Less than £2,500	<b>Starting point</b> Medium level community order	<b>Starting point</b> Band B fine	<b>Starting point</b> Band A fine
Starting point based on £1,000	<b>Category range</b> Low level community order – High level community order	<b>Category range</b> Band A fine – Band C fine	<b>Category range</b> Discharge – Band B fine

See page 353.

**TABLE 3**  
**Section 1 Fraud Act 2006**  
**Conspiracy to defraud (common law)**  
 Maximum: 10 years' custody

Harm	Culpability		
	A	B	C
<b>Category 1</b> £500,000 or more  Starting point based on £1 million	<b>Starting point</b> 7 years' custody	<b>Starting point</b> 5 years' custody	<b>Starting point</b> 3 years' custody
	<b>Category range</b> 5 – 8 years' custody	<b>Category range</b> 3 – 6 years' custody	<b>Category range</b> 18 months' – 4 years' custody
<b>Category 2</b> £100,000–£500,000  Starting point based on £300,000	<b>Starting point</b> 5 years' custody	<b>Starting point</b> 3 years' custody	<b>Starting point</b> 15 months' custody
	<b>Category range</b> 3 – 6 years' custody	<b>Category range</b> 18 months' – 4 years' custody	<b>Category range</b> 26 weeks' – 3 years' custody
<b>Category 3</b> £50,000–£100,000  Starting point based on £75,000	<b>Starting point</b> 3 years' custody	<b>Starting point</b> 15 months' custody	<b>Starting point</b> 36 weeks' custody
	<b>Category range</b> 2 years 6 months' – 4 years' custody	<b>Category range</b> 36 weeks' – 3 years' custody	<b>Category range</b> 26 weeks' – 1 year's custody
<b>Category 4</b> £10,000–£50,000  Starting point based on £30,000	<b>Starting point</b> 21 months' custody	<b>Starting point</b> 1 year's custody	<b>Starting point</b> High level community order
	<b>Category range</b> 1 year's – 3 years' custody	<b>Category range</b> High level community order – 2 years' custody	<b>Category range</b> Low level community order – 26 weeks' custody
<b>Category 5</b> £2,500–£10,000  Starting point based on £5,000	<b>Starting point</b> 1 year's custody	<b>Starting point</b> High level community order	<b>Starting point</b> Medium level community order
	<b>Category range</b> High level community order – 2 years' custody	<b>Category range</b> Low level community order – 26 weeks' custody	<b>Category range</b> Band C fine – High level community order
<b>Category 6</b> Less than £2,500  Starting point based on £1,000	<b>Starting point</b> High level community order	<b>Starting point</b> Low level community order	<b>Starting point</b> Band B fine
	<b>Category range</b> Low level community order – 26 weeks' custody	<b>Category range</b> Band B fine – Medium level community order	<b>Category range</b> Discharge – Band C fine



The table below 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 any further upward or downward adjustment from the starting point.

Consecutive sentences for multiple offences may be appropriate where large sums are involved.

#### 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:*

Claim fraudulent from the outset

Proceeds of fraud funded lavish lifestyle

Length of time over which the offending was committed

Number of false declarations

Attempts to conceal/dispose of evidence

Failure to comply with current court orders

Offence committed on licence

Offences taken into consideration

Failure to respond to warnings about behaviour

Blame wrongly placed on others

Damage to third party (for example as a result of identity theft)

#### Factors reducing seriousness or reflecting personal mitigation

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

Remorse

Good character and/or exemplary conduct

Serious medical condition requiring urgent, intensive or long term treatment

Legitimate entitlement to benefits not claimed

Little or no prospect of success

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

Lapse of time since apprehension where this does not arise from the conduct of the offender

Mental disorder or learning disability

Sole or primary carer for dependent relatives

Offender co-operated with investigation, made early admissions and/or voluntarily reported offending

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

Offender experiencing significant financial hardship or pressure at time fraud was committed due to **exceptional** circumstances

See page 355.

**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 potential 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**

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.

**STEP SIX****Confiscation, compensation and ancillary orders**

The court must proceed with a view to making a confiscation order if it is asked to do so by the prosecutor or if the court believes it is appropriate for it to do so.

Where the offence has resulted in loss or damage the court must consider whether to make a compensation order.

If the court makes both a confiscation order and an order for compensation and the court believes the offender will not have sufficient means to satisfy both orders in full, the court must direct that the compensation be paid out of sums recovered under the confiscation order (section 13 of the Proceeds of Crime Act 2002).

The court may also consider whether to make any 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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# Money laundering

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## **Concealing/disguising/converting/transferring/removing criminal property from England & Wales**

Proceeds of Crime Act 2002 (section 327)

## **Entering into arrangements concerning criminal property**

Proceeds of Crime Act 2002 (section 328)

## **Acquisition, use and possession of criminal property**

Proceeds of Crime Act 2002 (section 329)

**Triable either way**

**Maximum: 14 years' custody**

**Offence range: Band B fine – 13 years' imprisonment**

## STEP ONE

### Determining the offence category

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

The level of **culpability** is determined by weighing up all the factors of the case to determine the offender's role and the extent to which the offending was planned and the sophistication with which it was carried out.

**Culpability demonstrated by one or more of the following:**

#### A – High culpability

A leading role where offending is part of a group activity

Involvement of others through pressure, influence

Abuse of position of power or trust or responsibility

Sophisticated nature of offence/significant planning

Criminal activity conducted over sustained period of time

#### B – Medium culpability

Other cases where characteristics for categories A or C are not present

A significant role where offending is part of a group activity

#### C – Lesser culpability

Performed limited function under direction

Involved through coercion, intimidation or exploitation

Not motivated by personal gain

Opportunistic 'one-off' offence; very little or no planning

Limited awareness or understanding of extent of criminal activity

**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.**

### Harm A

**Harm is initially assessed by the value of the money laundered.**

#### Category 1

£10 million or more

Starting point based on £30 million

#### Category 2

£2 million–£10 million

Starting point based on £5 million

#### Category 3

£500,000–£2 million

Starting point based on £1 million

#### Category 4

£100,000–£500,000

Starting point based on £300,000

#### Category 5

£10,000–£100,000

Starting point based on £50,000

#### Category 6

Less than £10,000

Starting point based on £5,000

### Harm B

Money laundering is an integral component of much serious criminality. **To complete the assessment of harm, the court should take into account the level of harm associated with the underlying offence to determine whether it warrants upward adjustment of the starting point within the range, or in appropriate cases, outside the range.**

Where it is possible to identify the underlying offence, regard should be given to the relevant sentencing levels for that offence.

**STEP TWO****Starting point and category range**

Having determined the category at step one, the court should use the appropriate starting point (as adjusted in accordance with step one above) to reach a sentence within the category range in the table below. The starting point applies to all offenders irrespective of plea or previous convictions.

Where the value is larger or smaller than the amount on which the starting point is based, this should lead to upward or downward adjustment as appropriate.

**Where the value greatly exceeds the amount of the starting point in category 1, it may be appropriate to move outside the identified range.**

**Section 327 Proceeds of Crime Act 2002: Concealing/disguising/converting/transferring/removing criminal property from England & Wales**

**Section 328 Proceeds of Crime Act 2002: Entering into arrangements concerning criminal property**

**Section 329 Proceeds of Crime Act 2002: Acquisition, use and possession of criminal property**

Maximum: 14 years' custody

Harm	Culpability		
	A	B	C
<b>Category 1</b> £10 million or more	<b>Starting point</b> 10 years' custody	<b>Starting point</b> 7 years' custody	<b>Starting point</b> 4 years' custody
Starting point based on £30 million	<b>Category range</b> 8 – 13 years' custody	<b>Category range</b> 5 – 10 years' custody	<b>Category range</b> 3 – 6 years' custody
<b>Category 2</b> £2 million–£10 million	<b>Starting point</b> 8 years' custody	<b>Starting point</b> 6 years' custody	<b>Starting point</b> 3 years 6 months' custody
Starting point based on £5 million	<b>Category range</b> 6 – 9 years' custody	<b>Category range</b> 3 years 6 months' – 7 years' custody	<b>Category range</b> 2 – 5 years' custody
<b>Category 3</b> £500,000–£2 million	<b>Starting point</b> 7 years' custody	<b>Starting point</b> 5 years' custody	<b>Starting point</b> 3 years' custody
Starting point based on £1 million	<b>Category range</b> 5 – 8 years' custody	<b>Category range</b> 3 – 6 years' custody	<b>Category range</b> 18 months' – 4 years' custody
<b>Category 4</b> £100,000–£500,000	<b>Starting point</b> 5 years' custody	<b>Starting point</b> 3 years' custody	<b>Starting point</b> 18 months' custody
Starting point based on £300,000	<b>Category range</b> 3 – 6 years' custody	<b>Category range</b> 18 months' – 4 years' custody	<b>Category range</b> 26 weeks' – 3 years' custody
<b>Category 5</b> £10,000–£100,000	<b>Starting point</b> 3 years' custody	<b>Starting point</b> 18 months' custody	<b>Starting point</b> 26 weeks' custody
Starting point based on £50,000	<b>Category range</b> 18 months' – 4 years' custody	<b>Category range</b> 26 weeks' – 3 years' custody	<b>Category range</b> Medium level community order – 1 year's custody
<b>Category 6</b> Less than £10,000	<b>Starting point</b> 1 year's custody	<b>Starting point</b> High level community order	<b>Starting point</b> Low level community order
Starting point based on £5,000	<b>Category range</b> 26 weeks' – 2 years' custody	<b>Category range</b> Low level community order – 1 year's custody	<b>Category range</b> Band B fine – Medium level community order

The table below 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 of the sentence arrived at thus far.

Consecutive sentences for multiple offences may be appropriate where large sums are involved.

Factors increasing seriousness	Factors reducing seriousness or reflecting personal mitigation
<i>Statutory aggravating factors:</i>	
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	No previous convictions <b>or</b> no relevant/recent convictions
Offence committed whilst on bail	Remorse
<i>Other aggravating factors:</i>	Little or no prospect of success
Attempts to conceal/dispose of evidence	Good character and/or exemplary conduct
Established evidence of community/wider impact	Serious medical conditions requiring urgent, intensive or long-term treatment
Failure to comply with current court orders	Age and/or lack of maturity where it affects the responsibility of the offender
Offence committed on licence	Lapse of time since apprehension where this does not arise from the conduct of the offender
Offences taken into consideration	Mental disorder or learning disability
Failure to respond to warnings about behaviour	Sole or primary carer for dependent relatives
Offences committed across borders	Offender co-operated with investigation, made early admissions and/or voluntarily reported offending
Blame wrongly placed on others	Determination and/or demonstration of steps having been taken to address addiction or offending behaviour
Damage to third party for example loss of employment to legitimate employees	Activity originally legitimate

See page 361.

**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 potential 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**

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.

**STEP SIX****Confiscation, compensation and ancillary orders**

The court must proceed with a view to making a confiscation order if it is asked to do so by the prosecutor or if the court believes it is appropriate for it to do so.

Where the offence has resulted in loss or damage the court must consider whether to make a compensation order.

If the court makes both a confiscation order and an order for compensation and the court believes the offender will not have sufficient means to satisfy both orders in full, the court must direct that the compensation be paid out of sums recovered under the confiscation order (section 13 of the Proceeds of Crime Act 2002).

The court may also consider whether to make ancillary orders. These may include a deprivation order, a financial reporting order, a serious crime prevention order and disqualification from acting as a company director.

**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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# Bribery

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## **Bribing another person**

Bribery Act 2010 (section 1)

## **Being bribed**

Bribery Act 2010 (section 2)

## **Bribery of foreign public officials**

Bribery Act 2010 (section 6)

**Triable either way**

**Maximum: 10 years' custody**

**Offence range: Discharge – 8 years' custody**

**STEP ONE****Determining the offence category**

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

The level of **culpability** is determined by weighing up all the factors of the case to determine the offender's role and the extent to which the offending was planned and the sophistication with which it was carried out.

**Harm** is assessed in relation to any impact caused by the offending (whether to identifiable victims or in a wider context) and the actual or intended gain to the offender.

**Culpability demonstrated by one or more of the following:**

**A – High culpability**

A leading role where offending is part of a group activity

Involvement of others through pressure, influence

Abuse of position of significant power or trust or responsibility

Intended corruption (directly or indirectly) of a senior official performing a public function

Intended corruption (directly or indirectly) of a law enforcement officer

Sophisticated nature of offence/significant planning

Offending conducted over sustained period of time

Motivated by expectation of substantial financial, commercial or political gain

**B – Medium culpability**

All other cases where characteristics for categories A or C are not present

A significant role where offending is part of a group activity

**C – Lesser culpability**

Involved through coercion, intimidation or exploitation

Not motivated by personal gain

Peripheral role in organised activity

Opportunistic 'one-off' offence; very little or no planning

Limited awareness or understanding of extent of corrupt activity

**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.**

**Harm demonstrated by one or more of the following factors:**

**Category 1**

- Serious detrimental effect on individuals (for example by provision of substandard goods or services resulting from the corrupt behaviour)
- Serious environmental impact
- Serious undermining of the proper function of local or national government, business or public services
- Substantial actual or intended financial gain to offender or another or loss caused to others

**Category 2**

- Significant detrimental effect on individuals
- Significant environmental impact
- Significant undermining of the proper function of local or national government, business or public services
- Significant actual or intended financial gain to offender or another or loss caused to others
- Risk of category 1 harm

**Category 3**

- Limited detrimental impact on individuals, the environment, government, business or public services
- Risk of category 2 harm

**Category 4**

- Risk of category 3 harm

**Risk of harm** involves consideration of both the likelihood of harm occurring and the extent of it if it does. Risk of harm is less serious than the same actual harm. Where the offence has caused risk of harm but no (or much less) actual harm, the normal approach is to move to the next category of harm down. This may not be appropriate if either the likelihood or extent of potential harm is particularly high.

**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.

**Section 1 Bribery Act 2010: Bribing another person****Section 2 Bribery Act 2010: Being bribed****Section 6 Bribery Act 2010: Bribery of foreign public officials**

Maximum: 10 years' custody

Harm	Culpability		
	A	B	C
Category 1	<b>Starting point</b> 7 years' custody	<b>Starting point</b> 5 years' custody	<b>Starting point</b> 3 years' custody
	<b>Category range</b> 5 – 8 years' custody	<b>Category range</b> 3 – 6 years' custody	<b>Category range</b> 18 months' – 4 years' custody
Category 2	<b>Starting point</b> 5 years' custody	<b>Starting point</b> 3 years' custody	<b>Starting point</b> 18 months' custody
	<b>Category range</b> 3 – 6 years' custody	<b>Category range</b> 18 months' – 4 years' custody	<b>Category range</b> 26 weeks' – 3 years' custody
Category 3	<b>Starting point</b> 3 years' custody	<b>Starting point</b> 18 months' custody	<b>Starting point</b> 26 weeks' custody
	<b>Category range</b> 18 months' – 4 years' custody	<b>Category range</b> 26 weeks' – 3 years' custody	<b>Category range</b> Medium level community order – 1 year's custody
Category 4	<b>Starting point</b> 18 months' custody	<b>Starting point</b> 26 weeks' custody	<b>Starting point</b> Medium level community order
	<b>Category range</b> 26 weeks' – 3 years' custody	<b>Category range</b> Medium level community order – 1 year's custody	<b>Category range</b> Band B fine – High level community order

See page 366.

The table below 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 starting point.

Consecutive sentences for multiple offences may be appropriate where large sums are involved.

#### 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:*

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

Attempts to conceal/dispose of evidence

Established evidence of community/wider impact

Failure to comply with current court orders

Offence committed on licence

Offences taken into consideration

Failure to respond to warnings about behaviour

Offences committed across borders

Blame wrongly placed on others

Pressure exerted on another party

Offence committed to facilitate other criminal activity

#### Factors reducing seriousness or reflecting personal mitigation

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

Remorse

Good character and/or exemplary conduct

Little or no prospect of success

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

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

Lapse of time since apprehension where this does not arise from the conduct of the offender

Mental disorder or learning disability

Sole or primary carer for dependent relatives

Offender co-operated with investigation, made early admissions and/or voluntarily reported offending

See page 367.

**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 potential 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**

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.

**STEP SIX****Confiscation, compensation and ancillary orders**

The court must proceed with a view to making a confiscation order if it is asked to do so by the prosecutor or if the court believes it is appropriate for it to do so.

Where the offence has resulted in loss or damage the court must consider whether to make a compensation order.

If the court makes both a confiscation order and an order for compensation and the court believes the offender will not have sufficient means to satisfy both orders in full, the court must direct that the compensation be paid out of sums recovered under the confiscation order (section 13 of the Proceeds of Crime Act 2002).

The court may also consider whether to make ancillary orders. These may include a deprivation order, a financial reporting order, a serious crime prevention order and disqualification from acting as a company director.

**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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# Corporate Offenders: Fraud, Bribery and Money Laundering

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## Fraud

Conspiracy to defraud (common law)  
Cheat the public revenue (common law)

**Triable only on indictment**

Fraud Act 2006 (sections 1, 6 and 7)  
Theft Act 1968 (section 17)  
Value Added Tax Act 1994 (section 72)  
Customs and Excise Management Act 1979 (section 170)

**Triable either way**

## Bribery

Bribery Act 2010 (sections 1, 2, 6 and 7)

**Triable either way**

## Money laundering

Proceeds of Crime Act 2002 (sections 327, 328 and 329)

**Triable either way**

**Maximum: Unlimited fine**

**Most cases of corporate offending in this area are likely to merit allocation for trial to the Crown Court.**

**Committal for sentence is mandatory if confiscation (see step two) is to be considered. (Proceeds of Crime Act 2002 section 70).**



## **STEP ONE**

### **Compensation**

The court must consider making a compensation order requiring the offender to pay compensation for any personal injury, loss or damage resulting from the offence in such an amount as the court considers appropriate, having regard to the evidence and to the means of the offender.

Where the means of the offender are limited, priority should be given to the payment of compensation over payment of any other financial penalty.

Reasons should be given if a compensation order is not made.

(See section 130 Powers of Criminal Courts (Sentencing) Act 2000)

## **STEP TWO**

### **Confiscation**

Confiscation must be considered if either the Crown asks for it or the court thinks that it may be appropriate.

Confiscation must be dealt with before, and taken into account when assessing, any other fine or financial order (except compensation).

(See Proceeds of Crime Act 2002 sections 6 and 13)

See page 371.

## STEP THREE

### Determining the offence category

The court should determine the offence category with reference to **culpability** and **harm**.

#### Culpability

The sentencer should weigh up all the factors of the case to determine **culpability**. **Where there are characteristics present which fall under different categories, the court should balance these characteristics to reach a fair assessment of the offender's culpability.**

**Culpability** demonstrated by the offending corporation's role and motivation. May be demonstrated by one or more of the following **non-exhaustive** characteristics.

#### A – High culpability

Corporation plays a leading role in organised, planned unlawful activity (whether acting alone or with others)

Wilful obstruction of detection (for example destruction of evidence, misleading investigators, suborning employees)

Involving others through pressure or coercion (for example employees or suppliers)

Targeting of vulnerable victims or a large number of victims

Corruption of local or national government officials or ministers

Corruption of officials performing a law enforcement role

Abuse of dominant market position or position of trust or responsibility

Offending committed over a sustained period of time

Culture of wilful disregard of commission of offences by employees or agents with no effort to put effective systems in place (section 7 Bribery Act only)

#### B – Medium culpability

Corporation plays a significant role in unlawful activity organised by others

Activity not unlawful from the outset

Corporation reckless in making false statement (section 72 VAT Act 1994 )

All other cases where characteristics for categories A or C are not present

#### C – Lesser culpability

Corporation plays a minor, peripheral role in unlawful activity organised by others

Some effort made to put bribery prevention measures in place but insufficient to amount to a defence (section 7 Bribery Act only)

Involvement through coercion, intimidation or exploitation

#### Harm

Harm is represented by a financial sum calculated by reference to the table below

#### Amount obtained or intended to be obtained (or loss avoided or intended to be avoided)

<b>Fraud</b>	For offences of fraud, conspiracy to defraud, cheating the Revenue and fraudulent evasion of duty or VAT, harm will normally be the actual or intended gross gain to the offender.
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<b>Bribery</b>	For offences under the Bribery Act the appropriate figure will normally be the gross profit from the contract obtained, retained or sought as a result of the offending. An alternative measure for offences under section 7 may be the likely cost avoided by failing to put in place appropriate measures to prevent bribery.
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<b>Money laundering</b>	For offences of money laundering the appropriate figure will normally be the amount laundered or, alternatively, the likely cost avoided by failing to put in place an effective anti-money laundering programme if this is higher.
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<b>General</b>	Where the actual or intended gain cannot be established, the appropriate measure will be the amount that the court considers was likely to be achieved in all the circumstances.
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In the absence of sufficient evidence of the amount that was likely to be obtained, 10–20 per cent of the relevant revenue (for instance between 10 and 20 per cent of the worldwide revenue derived from the product or business area to which the offence relates for the period of the offending) **may** be an appropriate measure.

There may be large cases of fraud or bribery in which the true harm is to commerce or markets generally. That may justify adopting a harm figure beyond the normal measures here set out.

## STEP FOUR

### Starting point and category range

Having determined the culpability level at step three, the court should use the table below to determine the starting point within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions.

The harm figure at step three is multiplied by the relevant percentage figure representing culpability.

	Culpability Level		
	A	B	C
Harm figure multiplier	<b>Starting point</b> 300%	<b>Starting point</b> 200%	<b>Starting point</b> 100%
	<b>Category range</b> 250% to 400%	<b>Category range</b> 100% to 300%	<b>Category range</b> 20% to 150%

Having determined the appropriate starting point, the court should then consider adjustment within the category range for aggravating or mitigating features. In some cases, having considered these factors, it may be appropriate to move outside the identified category range. (See below for a **non-exhaustive** list of aggravating and mitigating factors.)

#### Factors increasing seriousness

Previous relevant convictions or subject to previous relevant civil or regulatory enforcement action
Corporation or subsidiary set up to commit fraudulent activity
Fraudulent activity endemic within corporation
Attempts made to conceal misconduct
Substantial harm (whether financial or otherwise) suffered by victims of offending or by third parties affected by offending
Risk of harm greater than actual or intended harm (for example in banking/credit fraud)
Substantial harm caused to integrity or confidence of markets
Substantial harm caused to integrity of local or national governments
Serious nature of underlying criminal activity (money laundering offences)
Offence committed across borders or jurisdictions

#### Factors reducing seriousness or reflecting mitigation

No previous relevant convictions or previous relevant civil or regulatory enforcement action
Victims voluntarily reimbursed/compensated
No actual loss to victims
Corporation co-operated with investigation, made early admissions and/or voluntarily reported offending
Offending committed under previous director(s)/manager(s)
Little or no actual gain to corporation from offending

## General principles to follow in setting a fine

The court should determine the appropriate level of fine in accordance with section 164 of the Criminal Justice Act 2003, which requires that the fine must reflect the seriousness of the offence and requires the court to take into account the financial circumstances of the offender.

## Obtaining financial information

### Companies and bodies delivering public or charitable services

Where the offender is a company or a body which delivers a public or charitable service, it is expected to provide comprehensive accounts for the last three years, to enable the court to make an accurate assessment of its financial status. In the absence of such disclosure, or where the court is not satisfied that it has been given sufficient reliable information, the court will be entitled to draw reasonable inferences as to the offender's means from evidence it has heard and from all the circumstances of the case.

1. *For companies*: annual accounts. Particular attention should be paid to turnover; profit before tax; directors' remuneration, loan accounts and pension provision; and assets as disclosed by the balance sheet. Most companies are required to file audited accounts at Companies House. Failure to produce relevant recent accounts on request may properly lead to the conclusion that the company can pay any appropriate fine.
2. *For partnerships*: annual accounts. Particular attention should be paid to turnover; profit before tax; partners' drawings, loan accounts and pension provision; assets as above. Limited liability partnerships (LLPs) may be required to file audited accounts with Companies House. If adequate accounts are not produced on request, see paragraph 1.
3. *For local authorities, fire authorities and similar public bodies*: the Annual Revenue Budget ("ARB") is the equivalent of turnover and the best indication of the size of the defendant organisation. It is unlikely to be necessary to analyse specific expenditure or reserves unless inappropriate expenditure is suggested.
4. *For health trusts*: the independent regulator of NHS Foundation Trusts is Monitor. It publishes quarterly reports and annual figures for the financial strength and stability of trusts from which the annual income can be seen, available via [www.monitor-nhsft.gov.uk](http://www.monitor-nhsft.gov.uk). Detailed analysis of expenditure or reserves is unlikely to be called for.
5. *For charities*: it will be appropriate to inspect annual audited accounts. Detailed analysis of expenditure or reserves is unlikely to be called for unless there is a suggestion of unusual or unnecessary expenditure.

**STEP FIVE****Adjustment of fine**

Having arrived at a fine level, the court should consider whether there are any further factors which indicate an adjustment in the level of the fine. The court should 'step back' and consider the overall effect of its orders. The combination of orders made, compensation, confiscation and fine ought to achieve:

- the removal of all gain
- appropriate additional punishment, and
- deterrence

The fine may be adjusted to ensure that these objectives are met in a fair way. The court should consider any further factors relevant to the setting of the level of the fine to ensure that the fine is proportionate, having regard to the size and financial position of the offending organisation and the seriousness of the offence.

The fine must be substantial enough to have a real economic impact which will bring home to both management and shareholders the need to operate within the law. Whether the fine will have the effect of putting the offender out of business will be relevant; in some bad cases this may be an acceptable consequence.

In considering the ability of the offending organisation to pay any financial penalty the court can take into account the power to allow time for payment or to order that the amount be paid in instalments.

The court should consider whether the level of fine would otherwise cause unacceptable harm to third parties. In doing so the court should bear in mind that the payment of any compensation determined at step one should take priority over the payment of any fine.

The table below contains a **non-exhaustive** list of additional factual elements for the court to consider. The Court should identify whether any combination of these, or other relevant factors, should result in a proportionate increase or reduction in the level of fine.

**Factors to consider in adjusting the level of fine**

Fine fulfils the objectives of punishment, deterrence and removal of gain

The value, worth or available means of the offender

Fine impairs offender's ability to make restitution to victims

Impact of fine on offender's ability to implement effective compliance programmes

Impact of fine on employment of staff, service users, customers and local economy (but not shareholders)

Impact of fine on performance of public or charitable function

## STEP SIX

### Consider any factors which would 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 SEVEN

### Reduction for guilty pleas

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

## STEP EIGHT

### Ancillary Orders

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

## STEP NINE

### Totality principle

If sentencing an offender for more than one offence, consider whether the total sentence is just and proportionate to the offending behaviour.

## STEP TEN

### Reasons

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

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# General Theft

Theft Act 1968 (section 1)

Including:

Theft from the person

Theft in a dwelling

Theft in breach of trust

Theft from a motor vehicle

Theft of a motor vehicle

Theft of a pedal bicycle

and all other section 1 Theft Act 1968 offences,  
excluding theft from a shop or stall

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Triable either way

Maximum: 7 years' custody

Offence range: Discharge – 6 years' custody



**STEP ONE****Determining the offence category**

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

The level of culpability is determined by weighing up all the factors of the case to determine the offender's role and the extent to which the offending was **planned** and the **sophistication** with which it was carried out.

**CULPABILITY demonstrated by one or more of the following:****A – High culpability**

A leading role where offending is part of a group activity

Involvement of others through coercion, intimidation or exploitation

Breach of a high degree of trust or responsibility

Sophisticated nature of offence/significant planning

Theft involving intimidation or the use or threat of force

Deliberately targeting victim on basis of vulnerability

**B – Medium culpability**

A significant role where offending is part of a group activity

Some degree of planning involved

Breach of some degree of trust or responsibility

All other cases where characteristics for categories A or C are not present

**C – Lesser culpability**

Performed limited function under direction

Involved through coercion, intimidation or exploitation

Little or no planning

Limited awareness or understanding of offence

**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.**

## HARM

**Harm** is assessed by reference to the **financial loss** that results from the theft **and any significant additional harm** suffered by the victim or others – examples of significant additional harm may include **but are not limited to:**

Items stolen were of substantial value to the loser – regardless of monetary worth

High level of inconvenience caused to the victim or others

Consequential financial harm to victim or others

Emotional distress

Fear/loss of confidence caused by the crime

Risk of or actual injury to persons or damage to property

Impact of theft on a business

Damage to heritage assets

Disruption caused to infrastructure

*Intended loss should be used where actual loss has been prevented.*

<b>Category 1</b>	Very high value goods stolen (above £100,000) <b>or</b> High value with significant additional harm to the victim or others
<b>Category 2</b>	High value goods stolen (£10,000 to £100,000) <b>and</b> no significant additional harm <b>or</b> Medium value with significant additional harm to the victim or others
<b>Category 3</b>	Medium value goods stolen (£500 to £10,000) <b>and</b> no significant additional harm <b>or</b> Low value with significant additional harm to the victim or others
<b>Category 4</b>	Low value goods stolen (up to £500) <b>and</b> Little or no significant additional harm to the victim or others

**See page 380.**

**STEP TWO****Starting point and category range**

Having determined the category at step one, the court should use the starting point to reach a sentence within the appropriate category range in the table below.

The starting point applies to all offenders irrespective of plea or previous convictions.

Harm	Culpability		
	A	B	C
<b>Category 1</b> Adjustment should be made for any significant additional harm factors where very high value goods are stolen.	<b>Starting point</b> 3 years 6 months' custody	<b>Starting point</b> 2 years' custody	<b>Starting point</b> 1 year's custody
	<b>Category range</b> 2 years 6 months' – 6 years' custody	<b>Category range</b> 1 – 3 years 6 months' custody	<b>Category range</b> 26 weeks' – 2 years' custody
<b>Category 2</b>	<b>Starting point</b> 2 years' custody	<b>Starting point</b> 1 year's custody	<b>Starting point</b> High level community order
	<b>Category range</b> 1 – 3 years 6 months' custody	<b>Category range</b> 26 weeks' – 2 years' custody	<b>Category range</b> Low level community order – 36 weeks' custody
<b>Category 3</b>	<b>Starting point</b> 1 year's custody	<b>Starting point</b> High level community order	<b>Starting point</b> Band C fine
	<b>Category range</b> 26 weeks' – 2 years' custody	<b>Category range</b> Low level community order – 36 weeks' custody	<b>Category range</b> Band B fine – Low level community order
<b>Category 4</b>	<b>Starting point</b> High level community order	<b>Starting point</b> Low level community order	<b>Starting point</b> Band B fine
	<b>Category range</b> Medium level community order – 36 weeks' custody	<b>Category range</b> Band C fine – Medium level community order	<b>Category range</b> Discharge – Band C fine

The table above refers to single offences. Where there are multiple offences, consecutive sentences may be appropriate: please refer to the *Offences Taken Into Consideration and Totality* guideline. Where multiple offences are committed in circumstances which justify consecutive sentences, and the total amount stolen is in excess of £1 million, then an aggregate sentence in excess of 7 years may be appropriate.

Where the offender is dependent on or has a propensity to misuse drugs or alcohol and there is sufficient prospect of success, a community order with a drug rehabilitation requirement under section 209, or an alcohol treatment requirement under section 212 of the Criminal Justice Act 2003 may be a proper alternative to a short or moderate custodial sentence.

Where the offender suffers from a medical condition that is susceptible to treatment but does not warrant detention under a hospital order, a community order with a mental health treatment requirement under section 207 of the Criminal Justice Act 2003 may be a proper alternative to a short or moderate custodial sentence.

The court should then consider further adjustment for any aggravating or mitigating factors. The following is 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.

### 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

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

#### *Other aggravating factors*

Stealing goods to order

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

Offender motivated by intention to cause harm or out of revenge

Offence committed over sustained period of time

Attempts to conceal/dispose of evidence

Failure to comply with current court orders

Offence committed on licence

Offences taken into consideration

Blame wrongly placed on others

Established evidence of community/wider impact (for issues other than prevalence)

Prevalence – see below

### Factors reducing seriousness or reflecting personal mitigation

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

Remorse, particularly where evidenced by voluntary reparation to the victim

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

Sole or primary carer for dependent relatives

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

Inappropriate degree of trust or responsibility

### Prevalence

There may be exceptional local circumstances that arise which may lead a court to decide that prevalence should influence sentencing levels. The pivotal issue in such cases will be the harm caused to the community.

It is essential that the court before taking account of prevalence:

- has supporting evidence from an external source, for example, Community Impact Statements, to justify claims that a particular crime is prevalent in their area, **and** is causing particular harm in that community, **and**
- is satisfied that there is a compelling need to treat the offence more seriously than elsewhere.

**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 potential 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**

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****Confiscation, compensation and ancillary orders**

The court must proceed with a view to making a confiscation order if it is asked to do so by the prosecutor or if the court believes it is appropriate for it to do so.

Where the offence has resulted in loss or damage the court must consider whether to make a compensation order.

If the court makes both a confiscation order and an order for compensation and the court believes the offender will not have sufficient means to satisfy both orders in full, the court must direct that the compensation be paid out of sums recovered under the confiscation order (section 13 of the Proceeds of Crime Act 2002).

The court may also consider whether to make ancillary orders. These may include a deprivation order, or a restitution order.

**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.

# Theft from a shop or stall

Theft Act 1968 (section 1)

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**Triable either way**

**Maximum: 7 years' custody**

(except for an offence of low-value shoplifting which is treated as a summary only offence in accordance with section 22A of the Magistrates' Courts Act 1980 where the maximum is 6 months' custody).

**Offence range: Discharge – 3 years' custody**

**STEP ONE****Determining the offence category**

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

The level of culpability is determined by weighing up all the factors of the case to determine the offender's role and the extent to which the offending was **planned** and the **sophistication** with which it was carried out.

**CULPABILITY demonstrated by one or more of the following:****A – High culpability**

A leading role where offending is part of a group activity

Involvement of others through coercion, intimidation or exploitation

Sophisticated nature of offence/significant planning

Significant use or threat of force

Offender subject to a banning order from the relevant store

Child accompanying offender is actively used to **facilitate** the offence (not merely present when offence is committed)

**B – Medium culpability**

A significant role where offending is part of a group activity

Some degree of planning involved

Limited use or threat of force

All other cases where characteristics for categories A or C are not present

**C – Lesser culpability**

Performed limited function under direction

Involved through coercion, intimidation or exploitation

Little or no planning

Mental disorder/learning disability where linked to commission of the offence

**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.**

## HARM

**Harm** is assessed by reference to the **financial loss** that results from the theft **and any significant additional harm** suffered by the victim – examples of significant additional harm may include **but are not limited to**:

Emotional distress
Damage to property
Effect on business
A greater impact on the victim due to the size or type of their business
A particularly vulnerable victim

*Intended loss should be used where actual loss has been prevented.*

<b>Category 1</b>	High value goods stolen (above £1,000) <b>or</b> Medium value with significant additional harm to the victim
<b>Category 2</b>	Medium value goods stolen (£200 to £1,000) <b>and</b> no significant additional harm <b>or</b> Low value with significant additional harm to the victim
<b>Category 3</b>	Low value goods stolen (up to £200) <b>and</b> Little or no significant additional harm to the victim

See page 386.



**STEP TWO****Starting point and category range**

Having determined the category at step one, the court should use the starting point to reach a sentence within the appropriate category range in the table below.

The starting point applies to all offenders irrespective of plea or previous convictions.

Harm	Culpability		
	A	B	C
<b>Category 1</b> Where the value greatly exceeds £1,000 it may be appropriate to move outside the identified range. Adjustment should be made for any significant additional harm where high value goods are stolen.	<b>Starting point</b> 26 weeks' custody	<b>Starting point</b> Medium level community order	<b>Starting point</b> Band C fine
	<b>Category range</b> 12 weeks' – 3 years' custody	<b>Category range</b> Low level community order – 26 weeks' custody	<b>Category range</b> Band B fine – Low level community order
<b>Category 2</b>	<b>Starting point</b> 12 weeks' custody	<b>Starting point</b> Low level community order	<b>Starting point</b> Band B fine
	<b>Category range</b> High level community order – 26 weeks' custody	<b>Category range</b> Band C fine – Medium level community order	<b>Category range</b> Band A fine – Band C fine
<b>Category 3</b>	<b>Starting point</b> High level community order	<b>Starting point</b> Band C fine	<b>Starting point</b> Band A fine
	<b>Category range</b> Low level community order – 12 weeks' custody	<b>Category range</b> Band B fine – Low level community order	<b>Category range</b> Discharge – Band B fine

Consecutive sentences for multiple offences may be appropriate – please refer to the *Offences Taken Into Consideration and Totality* guideline.

**Previous diversionary work with an offender does not preclude the court from considering this type of sentencing option again if appropriate.**

Where the offender is dependent on or has a propensity to misuse drugs or alcohol and there is sufficient prospect of success, a community order with a drug rehabilitation requirement under section 209, or an alcohol treatment requirement under section 212 of the Criminal Justice Act 2003 may be a proper alternative to a short or moderate custodial sentence.

Where the offender suffers from a medical condition that is susceptible to treatment but does not warrant detention under a hospital order, a community order with a mental health treatment requirement under section 207 of the Criminal Justice Act 2003 may be a proper alternative to a short or moderate custodial sentence.

The court should then consider further adjustment for any aggravating or mitigating factors. The following is 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.

### 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

Relevant recent convictions **may** justify an upward adjustment, including outside the category range. In cases involving significant persistent offending, the community and custodial thresholds may be crossed even though the offence otherwise warrants a lesser sentence. Any custodial sentence must be kept to the necessary minimum

Offence committed whilst on bail

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

#### *Other aggravating factors*

Stealing goods to order

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

Attempts to conceal/dispose of evidence

Offender motivated by intention to cause harm or out of revenge

Failure to comply with current court orders

Offence committed on licence

Offences taken into consideration

Established evidence of community/wider impact (for issues other than prevalence)

Prevalence – see below

### Factors reducing seriousness or reflecting personal mitigation

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

Remorse, particularly where evidenced by voluntary reparation to the victim

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)

Sole or primary carer for dependent relatives

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

Offender experiencing **exceptional** financial hardship

### Prevalence

There may be exceptional local circumstances that arise which may lead a court to decide that prevalence should influence sentencing levels. The pivotal issue in such cases will be the harm caused to the community.

It is essential that the court before taking account of prevalence:

- has supporting evidence from an external source, for example, Community Impact Statements, to justify claims that a particular crime is prevalent in their area, **and** is causing particular harm in that community, **and**
- is satisfied that there is a compelling need to treat the offence more seriously than elsewhere.

**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 potential 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**

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****Confiscation, compensation and ancillary orders**

The court must proceed with a view to making a confiscation order if it is asked to do so by the prosecutor or if the court believes it is appropriate for it to do so.

Where the offence has resulted in loss or damage the court must consider whether to make a compensation order.

If the court makes both a confiscation order and an order for compensation and the court believes the offender will not have sufficient means to satisfy both orders in full, the court must direct that the compensation be paid out of sums recovered under the confiscation order (section 13 of the Proceeds of Crime Act 2002).

The court may also consider whether to make ancillary orders. These may include a deprivation order, or a restitution order.

**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.

# Handling stolen goods

Theft Act 1968 (section 22)

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Triable either way

Maximum: 14 years' custody

Offence range: Discharge – 8 years' custody

**STEP ONE****Determining the offence category**

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

The level of culpability is determined by weighing up all the factors of the case to determine the offender's role and the extent to which the offending was **planned** and the **sophistication** with which it was carried out.

**CULPABILITY demonstrated by one or more of the following:****A – High culpability**

A leading role where offending is part of a group activity

Involvement of others through coercion, intimidation or exploitation

Abuse of position of power or trust or responsibility

Professional and sophisticated offence

Advance knowledge of the primary offence

Possession of very recently stolen goods from a domestic burglary or robbery

**B – Medium culpability**

A significant role where offending is part of a group activity

Offender acquires goods for resale

All other cases where characteristics for categories A or C are not present

**C – Lesser culpability**

Performed limited function under direction

Involved through coercion, intimidation or exploitation

Little or no planning

Limited awareness or understanding of offence

Goods acquired for offender's personal use

**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.**

## HARM

**Harm** is assessed by reference to the **financial value** (to the loser) of the handled goods **and any significant additional harm** associated with the underlying offence on the victim or others – examples of additional harm may include **but are not limited to**:

Property stolen from a domestic burglary or a robbery (unless this has already been taken into account in assessing culpability)

Items stolen were of substantial value to the loser, regardless of monetary worth

Metal theft causing disruption to infrastructure

Damage to heritage assets

<b>Category 1</b>	Very high value goods stolen (above £100,000) <b>or</b> High value with significant additional harm to the victim or others
<b>Category 2</b>	High value goods stolen (£10,000 to £100,000) <b>and</b> no significant additional harm <b>or</b> Medium value with significant additional harm to the victim or others
<b>Category 3</b>	Medium value goods stolen (£1,000 to £10,000) <b>and</b> no significant additional harm <b>or</b> Low value with significant additional harm to the victim or others
<b>Category 4</b>	Low value goods stolen (up to £1,000) <b>and</b> Little or no significant additional harm to the victim or others

See page 392.

**STEP TWO****Starting point and category range**

Having determined the category at step one, the court should use the starting point to reach a sentence within the appropriate category range in the table below.

The starting point applies to all offenders irrespective of plea or previous convictions.

Harm	Culpability		
	A	B	C
<b>Category 1</b> Where the value greatly exceeds £100,000, it may be appropriate to move outside the identified range. Adjustment should be made for any significant additional harm where very high value stolen goods are handled	<b>Starting point</b> 5 years' custody	<b>Starting point</b> 3 years' custody	<b>Starting point</b> 1 year's custody
	<b>Category range</b> 3 – 8 years' custody	<b>Category range</b> 1 year 6 months' – 4 years' custody	<b>Category range</b> 26 weeks' – 1 year 6 months' custody
<b>Category 2</b>	<b>Starting point</b> 3 years' custody	<b>Starting point</b> 1 year's custody	<b>Starting point</b> High level community order
	<b>Category range</b> 1 year 6 months' – 4 years' custody	<b>Category range</b> 26 weeks' – 1 year 6 months' custody	<b>Category range</b> Low level community order – 26 weeks' custody
<b>Category 3</b>	<b>Starting point</b> 1 year's custody	<b>Starting point</b> High level community order	<b>Starting point</b> Band C fine
	<b>Category range</b> 26 weeks' – 2 years' custody	<b>Category range</b> Low level community order – 26 weeks' custody	<b>Category range</b> Band B fine – Low level community order
<b>Category 4</b>	<b>Starting point</b> High level community order	<b>Starting point</b> Low level community order	<b>Starting point</b> Band B fine
	<b>Category range</b> Medium level community order – 26 weeks' custody	<b>Category range</b> Band C fine – High level community order	<b>Category range</b> Discharge – Band C fine

Consecutive sentences for multiple offences may be appropriate – please refer to the *Offences Taken Into Consideration and Totality* guideline.

See page 393.

The court should then consider further adjustment for any aggravating or mitigating factors. The following is 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 starting point.

#### 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*

Seriousness of the underlying offence, for example, armed robbery

Deliberate destruction, disposal or defacing of stolen property

Damage to a third party

Failure to comply with current court orders

Offence committed on licence

Offences taken into consideration

Established evidence of community/wider impact

#### 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

Sole or primary carer for dependent relatives

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

See page 394.



**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 potential 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**

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****Confiscation, compensation and ancillary orders**

The court must proceed with a view to making a confiscation order if it is asked to do so by the prosecutor or if the court believes it is appropriate for it to do so.

Where the offence has resulted in loss or damage the court must consider whether to make a compensation order.

If the court makes both a confiscation order and an order for compensation and the court believes the offender will not have sufficient means to satisfy both orders in full, the court must direct that the compensation be paid out of sums recovered under the confiscation order (section 13 of the Proceeds of Crime Act 2002).

The court may also consider whether to make ancillary orders. These may include a deprivation order, or a restitution order.

**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.

# Going equipped for theft or burglary

Theft Act 1968 (section 25)

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Triable either way

Maximum: 3 years' custody

Offence range: Discharge – 18 months' custody

**STEP ONE****Determining the offence category**

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

The level of culpability is determined by weighing up all the factors of the case to determine the offender's role and the extent to which the offending was **planned** and the **sophistication** with which it was carried out.

**CULPABILITY demonstrated by one or more of the following:****A – High culpability**

A leading role where offending is part of a group activity

Involvement of others through coercion, intimidation or exploitation

Significant steps taken to conceal identity and/or avoid detection

Sophisticated nature of offence/significant planning

Offender equipped for robbery or domestic burglary

**B – Medium culpability**

A significant role where offending is part of a group activity

All other cases where characteristics for categories A or C are not present

**C – Lesser culpability**

Involved through coercion, intimidation or exploitation

Limited awareness or understanding of offence

Little or no planning

**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.**

**HARM**

This guideline refers to preparatory offences where no theft has been committed. The level of harm is determined by weighing up all the factors of the case to determine the harm that would be caused if the item(s) were used to commit a substantive offence.

**Greater harm**

Possession of item(s) which have the potential to facilitate an offence affecting a large number of victims

Possession of item(s) which have the potential to facilitate an offence involving high value items

**Lesser harm**

All other cases

**STEP TWO****Starting point and category range**

Having determined the category at step one, the court should use the starting point to reach a sentence within the appropriate category range in the table below.

The starting point applies to all offenders irrespective of plea or previous convictions.

Harm	Culpability		
	A	B	C
<b>Greater</b>	<b>Starting point</b> 1 year's custody	<b>Starting point</b> 18 weeks' custody	<b>Starting point</b> Medium level community order
	<b>Category range</b> 26 weeks' – 1 year 6 months' custody	<b>Category range</b> High level community order – 36 weeks' custody	<b>Category range</b> Low level community order – High level community order
<b>Lesser</b>	<b>Starting point</b> 26 weeks' custody	<b>Starting point</b> High level community order	<b>Starting point</b> Band C fine
	<b>Category range</b> 12 weeks' – 36 weeks' custody	<b>Category range</b> Medium level community order – 12 weeks' custody	<b>Category range</b> Discharge – Medium level community order

Consecutive sentences for multiple offences may be appropriate – please refer to the *Offences Taken Into Consideration and Totality* guideline.

The court should then consider further adjustment for any aggravating or mitigating factors. The following is 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 starting point.

**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*

Attempts to conceal/dispose of evidence

Established evidence of community/wider impact

Failure to comply with current court orders

Offence committed on licence

Offences taken into consideration

**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

Sole or primary carer for dependent relatives

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

**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 potential 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**

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****Confiscation, compensation and ancillary orders**

The court must proceed with a view to making a confiscation order if it is asked to do so by the prosecutor or if the court believes it is appropriate for it to do so.

Where the offence has resulted in loss or damage the court must consider whether to make a compensation order.

If the court makes both a confiscation order and an order for compensation and the court believes the offender will not have sufficient means to satisfy both orders in full, the court must direct that the compensation be paid out of sums recovered under the confiscation order (section 13 of the Proceeds of Crime Act 2002).

The court may also consider whether to make any ancillary orders, such as a deprivation order.

**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.

# Abstracting electricity

Theft Act 1968 (section 13)

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Triable either way

Maximum: 5 years' custody

Offence range: Discharge – 1 year's custody

**STEP ONE****Determining the offence category**

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

The level of culpability is determined by weighing up all the factors of the case to determine the offender's role and the extent to which the offending was **planned** and the **sophistication** with which it was carried out.

**CULPABILITY demonstrated by one or more of the following:****A – High culpability**

A leading role where offending is part of a group activity

Involvement of others through coercion, intimidation or exploitation

Sophisticated nature of offence/significant planning

Abuse of position of power or trust or responsibility

Commission of offence in association with or to further other criminal activity

**B – Medium culpability**

A significant role where offending is part of a group activity

All other cases where characteristics for categories A or C are not present

**C – Lesser culpability**

Performed limited function under direction

Involved through coercion, intimidation or exploitation

Limited awareness or understanding of offence

**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.**

**HARM**

The level of harm is assessed by weighing up all the factors of the case to determine the level of harm caused.

**Greater harm**

A significant risk of, or actual injury to persons or damage to property

Significant volume of electricity extracted as evidenced by length of time of offending and/or advanced type of illegal process used

**Lesser harm**

All other cases

**STEP TWO****Starting point and category range**

Having determined the category at step one, the court should use the starting point to reach a sentence within the appropriate category range in the table below.

The starting point applies to all offenders irrespective of plea or previous convictions.

Harm	Culpability		
	A	B	C
<b>Greater</b>	<b>Starting point</b> 12 weeks' custody	<b>Starting point</b> Medium level community order	<b>Starting point</b> Band C fine
	<b>Category range</b> High level community order – 1 year's custody	<b>Category range</b> Low level community order – 12 weeks' custody	<b>Category range</b> Band B fine – Low level community order
<b>Lesser</b>	<b>Starting point</b> High level community order	<b>Starting point</b> Low level community order	<b>Starting point</b> Band A fine
	<b>Category range</b> Medium level community order – 12 weeks' custody	<b>Category range</b> Band C fine – Medium level community order	<b>Category range</b> Discharge – Band C fine

The court should then consider further adjustment for any aggravating or mitigating factors. The table below 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 starting point.

**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*

Electricity abstracted from another person's property

Attempts to conceal/dispose of evidence

Failure to comply with current court orders

Offence committed on licence

Offences taken into consideration

Blame wrongly placed on others

Established evidence of community/wider impact

**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

Sole or primary carer for dependent relatives

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



**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 potential 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**

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****Confiscation, compensation and ancillary orders**

The court must proceed with a view to making a confiscation order if it is asked to do so by the prosecutor or if the court believes it is appropriate for it to do so.

Where the offence has resulted in loss or damage the court must consider whether to make a compensation order.

If the court makes both a confiscation order and an order for compensation and the court believes the offender will not have sufficient means to satisfy both orders in full, the court must direct that the compensation be paid out of sums recovered under the confiscation order (section 13 of the Proceeds of Crime Act 2002).

The court may also consider whether to make ancillary orders. These may include a deprivation order, or a restitution order.

**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.

# Making off without payment

Theft Act 1978 (section 3)

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Triable either way

Maximum: 2 years' custody

Offence range: Discharge – 36 weeks' custody

**STEP ONE****Determining the offence category**

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

The level of culpability is determined by weighing up all the factors of the case to determine the offender's role and the extent to which the offending was **planned** and the **sophistication** with which it was carried out.

**CULPABILITY demonstrated by one or more of the following:****A – High culpability**

A leading role where offending is part of a group activity

Involvement of others through coercion, intimidation or exploitation

Sophisticated nature of offence/significant planning

Offence involving intimidation or the use or threat of force

Deliberately targeting victim on basis of vulnerability

**B – Medium culpability**

A significant role where offending is part of a group activity

Some degree of planning involved

All other cases where characteristics for categories A or C are not present

**C – Lesser culpability**

Performed limited function under direction

Involved through coercion, intimidation or exploitation

Little or no planning

Limited awareness or understanding of offence

**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.**

**See page 405.**

## HARM

**Harm** is assessed by reference to the **actual loss** that results from the offence **and any significant additional harm** suffered by the victim – examples of additional harm may include **but are not limited to**:

A high level of inconvenience caused to the victim

Emotional distress

Fear/loss of confidence caused by the crime

A greater impact on the victim due to the size or type of their business

**Category 1**

Goods or services obtained above £200 **or**

Goods/services up to £200 with significant additional harm to the victim

**Category 2**

Goods or services obtained up to £200 **and**

Little or no significant additional harm to the victim

See page 406.

**STEP TWO**  
**Starting point and category range**

Having determined the category at step one, the court should use the starting point to reach a sentence within the appropriate category range in the table below.

The starting point applies to all offenders irrespective of plea or previous convictions.

Harm	Culpability		
	A	B	C
<b>Category 1</b> Where the value greatly exceeds £200, it may be appropriate to move outside the identified range. Adjustment should be made for any significant additional harm for offences above £200.	<b>Starting point</b> 12 weeks' custody	<b>Starting point</b> Low level community order	<b>Starting point</b> Band B fine
	<b>Category range</b> High level community order – 36 weeks' custody	<b>Category range</b> Band C fine – High level community order	<b>Category range</b> Band A fine – Low level community order
<b>Category 2</b>	<b>Starting point</b> Medium level community order	<b>Starting point</b> Band C fine	<b>Starting point</b> Band A fine
	<b>Category range</b> Low level community order – 12 weeks' custody	<b>Category range</b> Band B fine – Low level community order	<b>Category range</b> Discharge – Band B fine

Consecutive sentences for multiple offences may be appropriate – please refer to the *Offences Taken Into Consideration and Totality* guideline.

See page 407.

The court should then consider further adjustment for any aggravating or mitigating factors. The following list is 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 starting point.

Factors increasing seriousness	Factors reducing seriousness or reflecting personal mitigation
<i>Statutory aggravating factors</i>	No previous convictions <b>or</b> no relevant/recent convictions
Previous convictions, having regard to a) the <b>nature</b> of the offence to which the conviction relates and its <b>relevance</b> to the current offence; and b) the <b>time</b> that has elapsed since the conviction	Remorse, particularly where evidenced by voluntary reparation to the victim
Offence committed whilst on bail	Good character and/or exemplary conduct
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	Serious medical condition requiring urgent, intensive or long-term treatment
<i>Other aggravating factors</i>	Age and/or lack of maturity where it affects the responsibility of the offender
Steps taken to prevent the victim reporting or obtaining assistance and/or from assisting or supporting the prosecution	Mental disorder or learning disability
Attempts to conceal/dispose of evidence	Sole or primary carer for dependent relatives
Failure to comply with current court orders	Determination and/or demonstration of steps having been taken to address addiction or offending behaviour
Offence committed on licence	
Offences taken into consideration	
Established evidence of community/wider impact	

See page 408.

**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 potential 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**

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****Confiscation, compensation and ancillary orders**

The court must proceed with a view to making a confiscation order if it is asked to do so by the prosecutor or if the court believes it is appropriate for it to do so.

Where the offence has resulted in loss or damage the court must consider whether to make a compensation order.

If the court makes both a confiscation order and an order for compensation and the court believes the offender will not have sufficient means to satisfy both orders in full, the court must direct that the compensation be paid out of sums recovered under the confiscation order (section 13 of the Proceeds of Crime Act 2002).

The court may also consider whether to make ancillary orders. These may include a deprivation order, or a restitution order.

**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.

# Organisations

## Breach of duty of employer towards employees and non-employees

## Breach of duty of self-employed to others

Health and Safety at Work Act 1974 (section 33(1)(a) for breaches of sections 2 and 3)

## Breach of Health and Safety regulations

Health and Safety at Work Act 1974 (section 33(1)(c))

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**Triable either way**

**Maximum: when tried on indictment: unlimited fine  
when tried summarily: unlimited fine**

**Offence range: £50 fine – £10 million fine**



**STEP ONE**  
**Determining the offence category**

The court should determine the offence category using only the culpability and harm factors in the tables below.

**Culpability**

Where there are factors present in the case that fall in different categories of culpability, the court should balance these factors to reach a fair assessment of the offender’s culpability.

<b>Very high</b>
Deliberate breach of or flagrant disregard for the law
<b>High</b>
Offender fell far short of the appropriate standard; for example, by: <ul style="list-style-type: none"> <li>• failing to put in place measures that are recognised standards in the industry</li> <li>• ignoring concerns raised by employees or others</li> <li>• failing to make appropriate changes following prior incident(s) exposing risks to health and safety</li> <li>• allowing breaches to subsist over a long period of time</li> </ul>
Serious and/or systemic failure within the organisation to address risks to health and safety
<b>Medium</b>
Offender fell short of the appropriate standard in a manner that falls between descriptions in ‘high’ and ‘low’ culpability categories
Systems were in place but these were not sufficiently adhered to or implemented
<b>Low</b>
Offender did not fall far short of the appropriate standard; for example, because: <ul style="list-style-type: none"> <li>• significant efforts were made to address the risk although they were inadequate on this occasion</li> <li>• there was no warning/circumstance indicating a risk to health and safety</li> </ul>
Failings were minor and occurred as an isolated incident

**See page 411.**

## Harm

Health and safety offences are concerned with failures to manage risks to health and safety and do not require proof that the offence caused any actual harm. **The offence is in creating a risk of harm.**

- 1) Use the table below to identify an initial harm category based on the **risk of harm created by the offence**. The assessment of harm requires a consideration of **both**:
- the seriousness of the harm risked (A, B or C) by the offender’s breach; **and**
  - the likelihood of that harm arising (high, medium or low).

Seriousness of harm risked			
	Level A	Level B	Level C
	<ul style="list-style-type: none"> <li>• Death</li> <li>• Physical or mental impairment resulting in lifelong dependency on third party care for basic needs</li> <li>• Significantly reduced life expectancy</li> </ul>	<ul style="list-style-type: none"> <li>• Physical or mental impairment, not amounting to Level A, which has a substantial and long-term effect on the sufferer’s ability to carry out normal day-to-day activities or on their ability to return to work</li> <li>• A progressive, permanent or irreversible condition</li> </ul>	<ul style="list-style-type: none"> <li>• All other cases not falling within Level A or Level B</li> </ul>
<b>High likelihood of harm</b>	Harm category 1	Harm category 2	Harm category 3
<b>Medium likelihood of harm</b>	Harm category 2	Harm category 3	Harm category 4
<b>Low likelihood of harm</b>	Harm category 3	Harm category 4	Harm category 4 (start towards bottom of range)

- 2) Next, the court must consider if the following factors apply. These two factors should be considered in the round in assigning the final harm category.

- i) **Whether the offence exposed a number of workers or members of the public to the risk of harm.** The greater the number of people, the greater the risk of harm.
- ii) **Whether the offence was a significant cause of actual harm.** Consider whether the offender’s breach was a **significant cause**\* of actual harm and the extent to which other factors contributed to the harm caused. Actions of victims are unlikely to be considered contributory events for sentencing purposes. Offenders are required to protect workers or others who may be neglectful of their own safety in a way which is reasonably foreseeable.

If one or both of these factors apply the court must consider either moving up a harm category or substantially moving up within the category range at step two overleaf. If already in harm category 1 and wishing to move higher, move up from the starting point at step two on the following pages. The court should not move up a harm category if actual harm was caused but to a lesser degree than the harm that was risked, as identified on the scale of seriousness above.

\* A significant cause is one which more than minimally, negligibly or trivially contributed to the outcome. It does not have to be the sole or principal cause.

**STEP TWO****Starting point and category range**

Having determined the offence category, the court should identify the relevant table for the offender on the following pages. There are tables for different sized organisations.

**At step two**, the court is required to focus on the organisation's annual turnover or equivalent to reach a starting point for a fine. The court should then consider further adjustment within the category range for aggravating and mitigating features.

**At step three**, the court may be required to refer to other financial factors listed below to ensure that the proposed fine is proportionate.

**Obtaining financial information**

The offender is expected to provide comprehensive accounts for the last three years, to enable the court to make an accurate assessment of its financial status. In the absence of such disclosure, or where the court is not satisfied that it has been given sufficient reliable information, the court will be entitled to draw reasonable inferences as to the offender's means from evidence it has heard and from all the circumstances of the case, **which may include the inference that the offender can pay any fine.**

Normally, only information relating to the organisation before the court will be relevant, unless exceptionally it is demonstrated to the court that the resources of a linked organisation are available and can properly be taken into account.

1. *For companies*: annual accounts. Particular attention should be paid to turnover; profit before tax; directors' remuneration, loan accounts and pension provision; and assets as disclosed by the balance sheet. Most companies are required to file audited accounts at Companies House. **Failure to produce relevant recent accounts on request may properly lead to the conclusion that the company can pay any appropriate fine.**
2. *For partnerships*: annual accounts. Particular attention should be paid to turnover; profit before tax; partners' drawings, loan accounts and pension provision; assets as above. Limited liability partnerships (LLPs) may be required to file audited accounts with Companies House. **If adequate accounts are not produced on request, see paragraph 1.**
3. *For local authorities, fire authorities and similar public bodies*: the Annual Revenue Budget ('ARB') is the equivalent of turnover and the best indication of the size of the organisation. It is unlikely to be necessary to analyse specific expenditure or reserves (where relevant) unless inappropriate expenditure is suggested.
4. *For health trusts*: the independent regulator of NHS Foundation Trusts is Monitor. It publishes quarterly reports and annual figures for the financial strength and stability of trusts from which the annual income can be seen, available via **www.monitor-nhsft.gov.uk**. Detailed analysis of expenditure or reserves is unlikely to be called for.
5. *For charities*: it will be appropriate to inspect annual audited accounts. Detailed analysis of expenditure or reserves is unlikely to be called for unless there is a suggestion of unusual or unnecessary expenditure.

**Very large organisation**

Where an offending organisation's turnover or equivalent very greatly exceeds the threshold for large organisations, it may be necessary to move outside the suggested range to achieve a proportionate sentence.

**Large**

Turnover or equivalent: £50 million and over

	Starting point	Category range
<b>Very high culpability</b>		
Harm category 1	£4,000,000	£2,600,000 – £10,000,000
Harm category 2	£2,000,000	£1,000,000 – £5,250,000
Harm category 3	£1,000,000	£500,000 – £2,700,000
Harm category 4	£500,000	£240,000 – £1,300,000
<b>High culpability</b>		
Harm category 1	£2,400,000	£1,500,000 – £6,000,000
Harm category 2	£1,100,000	£550,000 – £2,900,000
Harm category 3	£540,000	£250,000 – £1,450,000
Harm category 4	£240,000	£120,000 – £700,000
<b>Medium culpability</b>		
Harm category 1	£1,300,000	£800,000 – £3,250,000
Harm category 2	£600,000	£300,000 – £1,500,000
Harm category 3	£300,000	£130,000 – £750,000
Harm category 4	£130,000	£50,000 – £350,000
<b>Low culpability</b>		
Harm category 1	£300,000	£180,000 – £700,000
Harm category 2	£100,000	£35,000 – £250,000
Harm category 3	£35,000	£10,000 – £140,000
Harm category 4	£10,000	£3,000 – £60,000

**Medium**

Turnover or equivalent: between £10 million and £50 million

	Starting point	Category range
<b>Very high culpability</b>		
Harm category 1	£1,600,000	£1,000,000 – £4,000,000
Harm category 2	£800,000	£400,000 – £2,000,000
Harm category 3	£400,000	£180,000 – £1,000,000
Harm category 4	£190,000	£90,000 – £500,000
<b>High culpability</b>		
Harm category 1	£950,000	£600,000 – £2,500,000
Harm category 2	£450,000	£220,000 – £1,200,000
Harm category 3	£210,000	£100,000 – £550,000
Harm category 4	£100,000	£50,000 – £250,000
<b>Medium culpability</b>		
Harm category 1	£540,000	£300,000 – £1,300,000
Harm category 2	£240,000	£100,000 – £600,000
Harm category 3	£100,000	£50,000 – £300,000
Harm category 4	£50,000	£20,000 – £130,000
<b>Low culpability</b>		
Harm category 1	£130,000	£75,000 – £300,000
Harm category 2	£40,000	£14,000 – £100,000
Harm category 3	£14,000	£3,000 – £60,000
Harm category 4	£3,000	£1,000 – £10,000

<b>Small</b>			
<b>Turnover or equivalent: between £2 million and £10 million</b>			
	<b>Starting point</b>	<b>Category range</b>	
<b>Very high culpability</b>			
Harm category 1	£450,000	£300,000 –	£1,600,000
Harm category 2	£200,000	£100,000 –	£800,000
Harm category 3	£100,000	£50,000 –	£400,000
Harm category 4	£50,000	£20,000 –	£190,000
<b>High culpability</b>			
Harm category 1	£250,000	£170,000 –	£1,000,000
Harm category 2	£100,000	£50,000 –	£450,000
Harm category 3	£54,000	£25,000 –	£210,000
Harm category 4	£24,000	£12,000 –	£100,000
<b>Medium culpability</b>			
Harm category 1	£160,000	£100,000 –	£600,000
Harm category 2	£54,000	£25,000 –	£230,000
Harm category 3	£24,000	£12,000 –	£100,000
Harm category 4	£12,000	£4,000 –	£50,000
<b>Low culpability</b>			
Harm category 1	£45,000	£25,000 –	£130,000
Harm category 2	£9,000	£3,000 –	£40,000
Harm category 3	£3,000	£700 –	£14,000
Harm category 4	£700	£100 –	£5,000

<b>Micro</b>			
<b>Turnover or equivalent: not more than £2 million</b>			
	<b>Starting point</b>	<b>Category range</b>	
<b>Very high culpability</b>			
Harm category 1	£250,000	£150,000 –	£450,000
Harm category 2	£100,000	£50,000 –	£200,000
Harm category 3	£50,000	£25,000 –	£100,000
Harm category 4	£24,000	£12,000 –	£50,000
<b>High culpability</b>			
Harm category 1	£160,000	£100,000 –	£250,000
Harm category 2	£54,000	£30,000 –	£110,000
Harm category 3	£30,000	£12,000 –	£54,000
Harm category 4	£12,000	£5,000 –	£21,000
<b>Medium culpability</b>			
Harm category 1	£100,000	£60,000 –	£160,000
Harm category 2	£30,000	£14,000 –	£70,000
Harm category 3	£14,000	£6,000 –	£25,000
Harm category 4	£6,000	£2,000 –	£12,000
<b>Low culpability</b>			
Harm category 1	£30,000	£18,000 –	£60,000
Harm category 2	£5,000	£1,000 –	£20,000
Harm category 3	£1,200	£200 –	£7,000
Harm category 4	£200	£50 –	£2,000

The table below contains a **non-exhaustive** list of 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 starting point. **In particular, relevant recent convictions are likely to result in a substantial upward adjustment.** In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness	Factors reducing seriousness or reflecting mitigation
<i>Statutory aggravating factor:</i>	No previous convictions <b>or</b> no relevant/recent convictions
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	Evidence of steps taken voluntarily to remedy problem
<i>Other aggravating factors include:</i>	High level of co-operation with the investigation, beyond that which will always be expected
Cost-cutting at the expense of safety	Good health and safety record
Deliberate concealment of illegal nature of activity	Effective health and safety procedures in place
Breach of any court order	Self-reporting, co-operation and acceptance of responsibility
Obstruction of justice	
Poor health and safety record	
Falsification of documentation or licences	
Deliberate failure to obtain or comply with relevant licences in order to avoid scrutiny by authorities	
Targeting vulnerable victims	

See page 416.

## STEPS THREE AND FOUR

The court should 'step back', review and, if necessary, adjust the initial fine based on turnover to **ensure that it fulfils the objectives of sentencing** for these offences. The court may adjust the fine upwards or downwards, including outside the range.

### STEP THREE

**Check whether the proposed fine based on turnover is proportionate to the overall means of the offender**

#### General principles to follow in setting a fine

The court should finalise the appropriate level of fine in accordance with section 164 of the Criminal Justice Act 2003, which requires that the fine must reflect the seriousness of the offence and that the court must take into account the financial circumstances of the offender.

The level of fine should reflect the extent to which the offender fell below the required standard. The fine should meet, in a fair and proportionate way, the objectives of punishment, deterrence and the removal of gain derived through the commission of the offence; it should not be cheaper to offend than to take the appropriate precautions.

The fine must be **sufficiently substantial to have a real economic impact which will bring home to both management and shareholders the need to comply with health and safety legislation.**

#### Review of the fine based on turnover

The court should 'step back', review and, if necessary, adjust the initial fine reached at step two to **ensure that it fulfils the general principles** set out above. The court may adjust the fine upwards or downwards including outside of the range.

The court should examine the financial circumstances of the offender in the round to assess the economic realities of the organisation and the most efficacious way of giving effect to the purposes of sentencing.

In finalising the sentence, the court should have regard to the following factors:

- The profitability of an organisation will be relevant. If an organisation has a small profit margin relative to its turnover, downward adjustment may be needed. If it has a large profit margin, upward adjustment may be needed.
- Any quantifiable economic benefit derived from the offence, including through avoided costs or operating savings, should normally be added to the fine arrived at in step two. Where this is not readily available, the court may draw on information available from enforcing authorities and others about the general costs of operating within the law.
- Whether the fine will have the effect of putting the offender out of business will be relevant; in some bad cases this may be an acceptable consequence.

In considering the ability of the offending organisation to pay any financial penalty, the court can take into account the **power to allow time for payment or to order that the amount be paid in instalments**, if necessary over a number of years.

**STEP FOUR****Consider other factors that may warrant adjustment of the proposed fine**

The court should consider any wider impacts of the fine within the organisation or on innocent third parties; such as (but not limited to):

- the fine impairs offender's ability to make restitution to victims;
- impact of the fine on offender's ability to improve conditions in the organisation to comply with the law;
- impact of the fine on employment of staff, service users, customers and local economy (but not shareholders or directors).

Where the fine will fall on public or charitable bodies, the fine should normally be substantially reduced if the offending organisation is able to demonstrate the proposed fine would have a significant impact on the provision of its services.

**STEP FIVE****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 SIX****Reduction for guilty pleas**

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

**See page 418.**



**STEP SEVEN****Compensation and ancillary orders**

In all cases, the court must consider whether to make ancillary orders. These may include:

**Remediation**

Under section 42(1) of the Health and Safety at Work Act 1974, the court may impose a remedial order in addition to or instead of imposing any punishment on the offender.

An offender ought by the time of sentencing to have remedied any specific failings involved in the offence and if it has not, will be deprived of significant mitigation.

The cost of compliance with such an order should not ordinarily be taken into account in fixing the fine; the order requires only what should already have been done.

**Forfeiture**

Where the offence involves the acquisition or possession of an explosive article or substance, section 42(4) enables the court to order forfeiture of the explosive.

**Compensation**

Where the offence has resulted in loss or damage, the court must consider whether to make a compensation order. The assessment of compensation in cases involving death or serious injury will usually be complex and will ordinarily be covered by insurance. In the great majority of cases the court should conclude that compensation should be dealt with in the civil court, and should say that no order is made for that reason.

If compensation is awarded, priority should be given to the payment of compensation over payment of any other financial penalty where the means of the offender are limited.

Where the offender does not have sufficient means to pay the total financial penalty considered appropriate by the court, compensation and fine take priority over prosecution costs.

**STEP EIGHT****Totality principle**

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

**STEP NINE****Reasons**

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

# Individuals

## Breach of duty of employer towards employees and non-employees

## Breach of duty of self-employed to others

## Breach of duty of employees at work

Health and Safety at Work Act 1974 (section 33(1)(a) for breaches of sections 2, 3 and 7)

## Breach of Health and Safety regulations

Health and Safety at Work Act 1974 (section 33(1)(c))

## Secondary liability

Health and Safety at Work Act 1974 (sections 36 and 37(1) for breaches of sections 2 and 3 and section 33(1)(c))

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**Triable either way**

**Maximum:** when tried on indictment: unlimited fine and/or 2 years' custody  
when tried summarily: unlimited fine and/or 6 months' custody

**Offence range:** Conditional discharge – 2 years' custody

**STEP ONE****Determining the offence category**

The court should determine the offence category using only the culpability and harm factors in the tables below.

**Culpability**

Where there are factors present in the case that fall in different categories of culpability, the court should balance these factors to reach a fair assessment of the offender's culpability.

**Very high**

Where the offender intentionally breached, or flagrantly disregarded, the law

**High**

Actual foresight of, or wilful blindness to, risk of offending but risk nevertheless taken

**Medium**

Offence committed through act or omission which a person exercising reasonable care would not commit

**Low**

Offence committed with little fault, for example, because:

- significant efforts were made to address the risk although they were inadequate on this occasion
- there was no warning/circumstance indicating a risk to health and safety
- failings were minor and occurred as an isolated incident

**See page 421.**

## Harm

Health and safety offences are concerned with failures to manage risks to health and safety and do not require proof that the offence caused any actual harm. **The offence is in creating a risk of harm.**

- 1) Use the table below to identify an initial harm category based on the **risk of harm created by the offence**. The assessment of harm requires a consideration of **both**:
- the seriousness of the harm risked (A, B or C) by the offender’s breach; **and**
  - the likelihood of that harm arising (high, medium or low).

Seriousness of harm risked			
	Level A	Level B	Level C
	<ul style="list-style-type: none"> <li>• Death</li> <li>• Physical or mental impairment resulting in lifelong dependency on third party care for basic needs</li> <li>• Significantly reduced life expectancy</li> </ul>	<ul style="list-style-type: none"> <li>• Physical or mental impairment, not amounting to Level A, which has a substantial and long-term effect on the sufferer’s ability to carry out normal day-to-day activities or on their ability to return to work</li> <li>• A progressive, permanent or irreversible condition</li> </ul>	<ul style="list-style-type: none"> <li>• All other cases not falling within Level A or Level B</li> </ul>
High likelihood of harm	Harm category 1	Harm category 2	Harm category 3
Medium likelihood of harm	Harm category 2	Harm category 3	Harm category 4
Low likelihood of harm	Harm category 3	Harm category 4	Harm category 4 (start towards bottom of range)

- 2) Next, the court must consider if the following factors apply. These two factors should be considered in the round in assigning the final harm category.

- i) **Whether the offence exposed a number of workers or members of the public to the risk of harm.** The greater the number of people, the greater the risk of harm.
- ii) **Whether the offence was a significant cause of actual harm.** Consider whether the offender’s breach was a **significant cause**\* of actual harm and the extent to which other factors contributed to the harm caused. Actions of victims are unlikely to be considered contributory events for sentencing purposes. Offenders are required to protect workers or others who may be neglectful of their own safety in a way that is reasonably foreseeable.

If one or both of these factors apply the court must consider either moving up a harm category or substantially moving up within the category range at step two overleaf. If already in harm category 1 and wishing to move higher, move up from the starting point at step two overleaf. The court should not move up a harm category if actual harm was caused but to a lesser degree than the harm that was risked, as identified on the scale of seriousness above.

\* A significant cause is one which more than minimally, negligibly or trivially contributed to the outcome. It does not have to be the sole or principal cause.

**STEP TWO****Starting point and category range**

Having determined the category, the court should refer to the starting points on the following page to reach a sentence within the category range. The court should then consider further adjustment within the category range for aggravating and mitigating features.

**Obtaining financial information**

In setting a fine, the court may conclude that the offender is able to pay any fine imposed unless the offender has supplied any financial information to the contrary. It is for the offender to disclose to the court such data relevant to his financial position as will enable it to assess what he can reasonably afford to pay. If necessary, the court may compel the disclosure of an individual offender's financial circumstances pursuant to section 162 of the Criminal Justice Act 2003. In the absence of such disclosure, or where the court is not satisfied that it has been given sufficient reliable information, the court will be entitled to draw reasonable inferences as to the offender's means from evidence it has heard and from all the circumstances of the case **which may include the inference that the offender can pay any fine.**

**Starting points and ranges**

Where the range includes a potential sentence of custody, the court should consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

Where the range includes a potential sentence of a community order, the court should consider the community order threshold as follows:

- has the community order threshold been passed?

**Even where the community order threshold has been passed, a fine will normally be the most appropriate disposal where the offence was committed for economic benefit.** Or, if wishing to remove economic benefit derived through the commission of the offence, consider combining a fine with a community order.

**See page 423.**

	Starting point	Category range
<b>Very high culpability</b>		
Harm category 1	18 months' custody	1 – 2 years' custody
Harm category 2	1 year's custody	26 weeks' – 18 months' custody
Harm category 3	26 weeks' custody	Band F fine or high level community order – 1 year's custody
Harm category 4	Band F fine	Band E fine – 26 weeks' custody
<b>High culpability</b>		
Harm category 1	1 year's custody	26 weeks' – 18 months' custody
Harm category 2	26 weeks' custody	Band F fine or high level community order – 1 year's custody
Harm category 3	Band F fine	Band E fine or medium level community order – 26 weeks' custody
Harm category 4	Band E fine	Band D fine – Band E fine
<b>Medium culpability</b>		
Harm category 1	26 weeks' custody	Band F fine or high level community order – 1 year's custody
Harm category 2	Band F fine	Band E fine or medium level community order – 26 weeks' custody
Harm category 3	Band E fine	Band D fine or low level community order – Band E fine
Harm category 4	Band D fine	Band C fine – Band D fine
<b>Low culpability</b>		
Harm category 1	Band F fine	Band E fine or medium level community order – 26 weeks' custody
Harm category 2	Band D fine	Band C fine – Band D fine
Harm category 3	Band C fine	Band B fine – Band C fine
Harm category 4	Band A fine	Conditional discharge – Band A fine

See page 424.

The table below contains a **non-exhaustive** list of 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 starting point. **In particular, relevant recent convictions are likely to result in a substantial upward adjustment.** In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness	Factors reducing seriousness or reflecting personal mitigation
<i>Statutory aggravating factors:</i>	No previous convictions <b>or</b> no relevant/recent convictions
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	Evidence of steps taken voluntarily to remedy problem
Offence committed whilst on bail	High level of co-operation with the investigation, beyond that which will always be expected
<i>Other aggravating factors include:</i>	Good health and safety record
Cost-cutting at the expense of safety	Effective health and safety procedures in place
Deliberate concealment of illegal nature of activity	Self-reporting, co-operation and acceptance of responsibility
Breach of any court order	Good character and/or exemplary conduct
Obstruction of justice	Inappropriate degree of trust or responsibility
Poor health and safety record	Mental disorder or learning disability, where linked to the commission of the offence
Falsification of documentation or licences	Serious medical conditions requiring urgent, intensive or long term treatment
Deliberate failure to obtain or comply with relevant licences in order to avoid scrutiny by authorities	Age and/or lack of maturity where it affects the responsibility of the offender
Targeting vulnerable victims	Sole or primary carer for dependent relatives

See page 425.

**STEP THREE****Review any financial element of the sentence**

Where the sentence is or includes a fine, the court should ‘step back’ and, using the factors set out below, review whether the sentence as a whole meets the objectives of sentencing for these offences. The court may increase or reduce the proposed fine reached at step two, if necessary moving outside of the range.

**General principles to follow in setting a fine**

The court should finalise the appropriate level of fine in accordance with section 164 of the Criminal Justice Act 2003, which requires that the fine must reflect the seriousness of the offence and that the court must take into account the financial circumstances of the offender.

The level of fine should reflect the extent to which the offender fell below the required standard. The fine should meet, in a fair and proportionate way, the objectives of punishment, deterrence and the removal of gain derived through the commission of the offence; it should not be cheaper to offend than to take the appropriate precautions.

**Review of the fine**

Where the court proposes to impose a fine it should ‘step back’, review and, if necessary, adjust the initial fine reached at step two to **ensure that it fulfils the general principles** set out above.

Any quantifiable economic benefit derived from the offence, including through avoided costs or operating savings, should normally be added to the fine arrived at in step two. Where this is not readily available, the court may draw on information available from enforcing authorities and others about the general costs of operating within the law.

In finalising the sentence, the court should have regard to the following factors relating to the wider impacts of the fine on innocent third parties; such as (but not limited to):

- impact of the fine on offender’s ability to comply with the law;
- impact of the fine on employment of staff, service users, customers and local economy.

**STEP FOUR****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 FIVE****Reduction for guilty pleas**

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



**STEP SIX****Compensation and ancillary orders**

In all cases, the court must consider whether to make ancillary orders. These may include:

***Disqualification of director***

An offender may be disqualified from being a director of a company in accordance with section 2 of the Company Directors Disqualification Act 1986. The maximum period of disqualification is 15 years (Crown Court) or 5 years (magistrates' court).

***Remediation***

Under section 42(1) of the Health and Safety at Work Act 1974, the court may impose a remedial order in addition to or instead of imposing any punishment on the offender.

An offender ought by the time of sentencing to have remedied any specific failings involved in the offence and if not, will be deprived of significant mitigation.

The cost of compliance with such an order should not ordinarily be taken into account in fixing the fine; the order requires only what should already have been done.

***Forfeiture***

Where the offence involves the acquisition or possession of an explosive article or substance, section 42(4) enables the court to order forfeiture of the explosive.

***Compensation***

Where the offence has resulted in loss or damage, the court must consider whether to make a compensation order. The assessment of compensation in cases involving death or serious injury will usually be complex and will ordinarily be covered by insurance. In the great majority of cases the court should conclude that compensation should be dealt with in the civil courts, and should say that no order is made for that reason.

If compensation is awarded, priority should be given to the payment of compensation over payment of any other financial penalty where the means of the offender are limited.

Where the offender does not have sufficient means to pay the total financial penalty considered appropriate by the court, compensation and fine take priority over prosecution costs.

**STEP SEVEN****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 offending behaviour in accordance with the *Offences Taken into Consideration and Totality* guideline.

**STEP EIGHT****Reasons**

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

**STEP NINE****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.

# Organisations

## Breach of food safety and food hygiene regulations

### England

Food Safety and Hygiene (England) Regulations 2013  
(regulation 19(1))

Triable either way

Maximum: when tried on indictment: unlimited fine  
when tried summarily: unlimited fine

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### Wales

Food Hygiene (Wales) Regulations 2006 (regulation 17(1))  
The General Food Regulations 2004 (regulation 4)

Triable either way

Maximum: when tried on indictment: unlimited fine  
when tried summarily: unlimited fine

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Offence range: £100 fine – £3 million fine

**STEP ONE****Determining the offence category**

The court should determine the offence category using only the culpability and harm factors in the tables below. Where an offence does not fall squarely into a category, individual factors may require a **degree of weighting** to make an overall assessment.

**Culpability****Very high**

Deliberate breach of or flagrant disregard for the law

**High**

Offender fell far short of the appropriate standard; for example, by:

- failing to put in place measures that are recognised standards in the industry
- ignoring concerns raised by regulators, employees or others
- allowing breaches to subsist over a long period of time

Serious and/or systemic failure within the organisation to address risks to health and safety

**Medium**

Offender fell short of the appropriate standard in a manner that falls between descriptions in 'high' and 'low' culpability categories

Systems were in place but these were not sufficiently adhered to or implemented

**Low**

Offender did not fall far short of the appropriate standard; for example, because:

- significant efforts were made to secure food safety although they were inadequate on this occasion
- there was no warning/circumstance indicating a risk to food safety

Failings were minor and occurred as an isolated incident

**Harm**

The table below contains factors relating to both actual harm and risk of harm. Dealing with a **risk of harm** involves consideration of both the likelihood of harm occurring and the extent of it if it does.

**Harm**

<b>Category 1</b>	<ul style="list-style-type: none"> <li>• Serious adverse effect(s) on individual(s) and/or having a widespread impact</li> <li>• High risk of an adverse effect on individual(s) including where supply was to groups that are vulnerable</li> </ul>
<b>Category 2</b>	<ul style="list-style-type: none"> <li>• Adverse effect on individual(s) (not amounting to Category 1)</li> <li>• Medium risk of an adverse effect on individual(s) or low risk of serious adverse effect</li> <li>• Regulator and/or legitimate industry substantially undermined by offender's activities</li> <li>• Relevant authorities unable to trace products in order to investigate risks to health, or are otherwise inhibited in identifying or addressing risks to health</li> <li>• Consumer misled regarding food's compliance with religious or personal beliefs</li> </ul>
<b>Category 3</b>	<ul style="list-style-type: none"> <li>• Low risk of an adverse effect on individual(s)</li> <li>• Public misled about the specific food consumed, but little or no risk of actual adverse effect on individual(s)</li> </ul>

**STEP TWO****Starting point and category range**

Having determined the offence category, the court should identify the relevant table for the offender on the following pages. There are tables for different sized organisations.

**At step two**, the court is required to focus on the organisation's annual turnover or equivalent to reach a starting point for a fine. The court should then consider further adjustment within the category range for aggravating and mitigating features.

**At step three**, the court may be required to refer to other financial factors listed below to ensure that the proposed fine is proportionate.

**Obtaining financial information**

Offenders which are companies, partnerships or bodies delivering a public or charitable service are expected to provide comprehensive accounts for the last three years, to enable the court to make an accurate assessment of its financial status. In the absence of such disclosure, or where the court is not satisfied that it has been given sufficient reliable information, the court will be entitled to draw reasonable inferences as to the offender's means from evidence it has heard and from all the circumstances of the case, **which may include the inference that the offender can pay any fine.**

Normally, only information relating to the organisation before the court will be relevant, unless it is demonstrated to the court that the resources of a linked organisation are available and can properly be taken into account.

1. *For companies*: annual accounts. Particular attention should be paid to turnover; profit before tax; directors' remuneration, loan accounts and pension provision; and assets as disclosed by the balance sheet. Most companies are required to file audited accounts at Companies House. Failure to produce relevant recent accounts on request may properly lead to the conclusion that the company can pay any appropriate fine.
2. *For partnerships*: annual accounts. Particular attention should be paid to turnover; profit before tax; partners' drawings, loan accounts and pension provision; assets as above. Limited liability partnerships (LLPs) may be required to file audited accounts with Companies House. If adequate accounts are not produced on request, see paragraph 1.
3. *For local authorities, police and fire authorities and similar public bodies*: the Annual Revenue Budget ('ARB') is the equivalent of turnover and the best indication of the size of the organisation. It is unlikely to be necessary to analyse specific expenditure or reserves unless inappropriate expenditure is suggested.
4. *For health trusts*: the independent regulator of NHS Foundation Trusts is Monitor. It publishes quarterly reports and annual figures for the financial strength and stability of trusts from which the annual income can be seen, available via [www.monitor-nhsft.gov.uk](http://www.monitor-nhsft.gov.uk). Detailed analysis of expenditure or reserves is unlikely to be called for.
5. *For charities*: it will be appropriate to inspect annual audited accounts. Detailed analysis of expenditure or reserves is unlikely to be called for unless there is a suggestion of unusual or unnecessary expenditure.

**Very large organisation**

Where an offending organisation's turnover or equivalent very greatly exceeds the threshold for large organisations, it may be necessary to move outside the suggested range to achieve a proportionate sentence.

**Large**

Turnover or equivalent: £50 million and over

	Starting point	Range
<b>Very high culpability</b>		
Harm category 1	£1,200,000	£500,000 – £3,000,000
Harm category 2	£500,000	£200,000 – £1,400,000
Harm category 3	£200,000	£90,000 – £500,000
<b>High culpability</b>		
Harm category 1	£500,000	£200,000 – £1,400,000
Harm category 2	£230,000	£90,000 – £600,000
Harm category 3	£90,000	£50,000 – £240,000
<b>Medium culpability</b>		
Harm category 1	£200,000	£80,000 – £500,000
Harm category 2	£90,000	£35,000 – £220,000
Harm category 3	£35,000	£20,000 – £100,000
<b>Low culpability</b>		
Harm category 1	£35,000	£18,000 – £90,000
Harm category 2	£18,000	£9,000 – £50,000
Harm category 3	£10,000	£6,000 – £25,000

**Medium**

Turnover or equivalent: between £10 million and £50 million

	Starting point	Range
<b>Very high culpability</b>		
Harm category 1	£450,000	£200,000 – £1,200,000
Harm category 2	£200,000	£80,000 – £500,000
Harm category 3	£80,000	£40,000 – £200,000
<b>High culpability</b>		
Harm category 1	£200,000	£90,000 – £500,000
Harm category 2	£90,000	£35,000 – £220,000
Harm category 3	£35,000	£18,000 – £90,000
<b>Medium culpability</b>		
Harm category 1	£80,000	£35,000 – £190,000
Harm category 2	£35,000	£14,000 – £90,000
Harm category 3	£14,000	£7,000 – £35,000
<b>Low culpability</b>		
Harm category 1	£12,000	£7,000 – £35,000
Harm category 2	£7,000	£3,500 – £18,000
Harm category 3	£3,500	£2,000 – £10,000

<b>Small</b>			
Turnover or equivalent: between £2 million and £10 million			
	Starting point	Range	
<b>Very high culpability</b>			
Harm category 1	£120,000	£50,000 –	£450,000
Harm category 2	£50,000	£18,000 –	£200,000
Harm category 3	£18,000	£9,000 –	£80,000
<b>High culpability</b>			
Harm category 1	£50,000	£22,000 –	£200,000
Harm category 2	£24,000	£8,000 –	£90,000
Harm category 3	£9,000	£4,000 –	£35,000
<b>Medium culpability</b>			
Harm category 1	£18,000	£7,000 –	£70,000
Harm category 2	£8,000	£3,000 –	£35,000
Harm category 3	£3,000	£1,500 –	£12,000
<b>Low culpability</b>			
Harm category 1	£3,000	£1,400 –	£12,000
Harm category 2	£1,400	£700 –	£7,000
Harm category 3	£700	£300 –	£3,000

<b>Micro</b>			
Turnover or equivalent: not more than £2 million			
	Starting point	Range	
<b>Very high culpability</b>			
Harm category 1	£60,000	£25,000 –	£120,000
Harm category 2	£25,000	£10,000 –	£50,000
Harm category 3	£10,000	£5,000 –	£18,000
<b>High culpability</b>			
Harm category 1	£25,000	£10,000 –	£50,000
Harm category 2	£12,000	£4,000 –	£22,000
Harm category 3	£4,000	£2,000 –	£9,000
<b>Medium culpability</b>			
Harm category 1	£10,000	£3,000 –	£18,000
Harm category 2	£4,000	£1,400 –	£8,000
Harm category 3	£1,400	£700 –	£3,000
<b>Low culpability</b>			
Harm category 1	£1,200	£500 –	£3,000
Harm category 2	£500	£200 –	£1,400
Harm category 3	£200	£100 –	£700

The table below contains a **non-exhaustive** list of 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 starting point. **In particular, relevant recent convictions are likely to result in a substantial 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 factor:*

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

##### *Other aggravating factors include:*

Motivated by financial gain

Deliberate concealment of illegal nature of activity

Established evidence of wider/community impact

Breach of any court order

Obstruction of justice

Poor food safety or hygiene record

Refusal of free advice or training

#### Factors reducing seriousness or reflecting mitigation

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

Steps taken voluntarily to remedy problem

High level of co-operation with the investigation, beyond that which will always be expected

Good food safety/hygiene record

Self-reporting, co-operation and acceptance of responsibility

## STEPS THREE AND FOUR

The court should ‘step back’, review and, if necessary, adjust the initial fine based on turnover to **ensure that it fulfils the objectives of sentencing** for these offences. The court may adjust the fine upwards or downwards, including outside the range. Full regard should be given to the totality principle at step eight where multiple offences are involved.

### STEP THREE

**Check whether the proposed fine based on turnover is proportionate to the overall means of the offender**

#### General principles to follow in setting a fine

The court should finalise the fine in accordance with section 164 of the Criminal Justice Act 2003, which requires that the fine must reflect the seriousness of the offence and that the court must take into account the financial circumstances of the offender.

The level of fine should reflect the extent to which the offender fell below the required standard. **The fine should meet, in a fair and proportionate way, the objectives of punishment, deterrence and the removal of gain derived through the commission of the offence;** it should not be cheaper to offend than to take the appropriate precautions.

The fine must be **sufficiently substantial to have a real economic impact which will bring home to both management and shareholders the need to operate within the law.**

### Review of the fine based on turnover

The court should ‘step back’, review and, if necessary, adjust the initial fine reached at step two to **ensure that it fulfils the general principles** set out above. The court may adjust the fine upwards or downwards including outside of the range.

The court should examine the financial circumstances of the offender in the round to enable the court to assess the economic realities of the company and the most efficacious way of giving effect to the purposes of sentencing.

In finalising the sentence, the court should have regard to the following factors:

- The profitability of an organisation will be relevant. If an organisation has a small profit margin relative to its turnover, downward adjustment may be needed. If it has a large profit margin, upward adjustment may be needed.
- Any quantifiable economic benefit derived from the offence, including through avoided costs or operating savings, should normally be added to the total fine arrived at in step two. Where this is not readily available, the court may draw on information available from enforcing authorities and others about the general costs of operating within the law.
- Whether the fine will have the effect of putting the offender out of business will be relevant; in some bad cases this may be an acceptable consequence.

In considering the ability of the offending organisation to pay any financial penalty, the court can take into account the **power to allow time for payment or to order that the amount be paid in instalments**, if necessary over a number of years.

## STEP FOUR

### Consider other factors that may warrant adjustment of the proposed fine

Where the fine will fall on public or charitable bodies, the fine should normally be substantially reduced if the offending organisation is able to demonstrate the proposed fine would have a significant impact on the provision of their services.

The court should consider any wider impacts of the fine within the organisation or on innocent third parties; such as (but not limited to):

- impact of the fine on offender’s ability to improve conditions in the organisation to comply with the law;
- impact of the fine on employment of staff, service users, customers and local economy (but not shareholders or directors).



**STEP FIVE****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 SIX****Reduction for guilty pleas**

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

**STEP SEVEN****Compensation and ancillary orders***Hygiene Prohibition Order*

These orders are available under both the Food Safety and Hygiene (England) Regulations 2013 and the Food Hygiene (Wales) Regulations 2006.

If the court is satisfied that the health risk condition in Regulation 7(2) is fulfilled it **shall** impose the appropriate prohibition order in Regulation 7(3).

Where a food business operator is convicted of an offence under the Regulations and the court thinks it is proper to do so in all the circumstances of the case, the court **may** impose a prohibition on the operator pursuant to Regulation 7(4). An order under Regulation 7(4) is not limited to cases where there is an immediate risk to public health; the court might conclude that there is such a risk of some future breach of the regulations or the facts of any particular offence or combination of offences may alone justify the imposition of a Hygiene Prohibition Order. In deciding whether to impose an order, the court will want to consider the history of convictions or a failure to heed warnings or advice in deciding whether an order is proportionate to the facts of the case. Deterrence may also be an important consideration.

*Compensation*

Where the offence results in the loss or damage the court must consider whether to make a compensation order. If compensation is awarded, priority should be given to the payment of compensation over payment of any other financial penalty where the means of the offender are limited.

Where the offender does not have sufficient means to pay the total financial penalty considered appropriate by the court, compensation and fine take priority over prosecution costs.

**STEP EIGHT****Totality principle**

If sentencing an offender for more than one offence, consider whether the total sentence is just and proportionate to the offending behaviour in accordance with the *Offences Taken into Consideration and Totality* guideline from which the following guidance is taken:

“The total fine is inevitably cumulative.

The court should determine the fine for each individual offence based on the seriousness of the offence and taking into account the circumstances of the case including the financial circumstances of the offender so far as they are known, or appear, to the court.

The court should add up the fines for each offence and consider if they are just and proportionate.

If the aggregate total is not just and proportionate the court should consider how to reach a just and proportionate fine. There are a number of ways in which this can be achieved.

*For example:*

- where an offender is to be fined for two or more offences that arose out of the same incident or where there are multiple offences of a repetitive kind, especially when committed against the same person, it will often be appropriate to impose for the most serious offence a fine which reflects the totality of the offending where this can be achieved within the maximum penalty for that offence. No separate penalty should be imposed for the other offences;
- where an offender is to be fined for two or more offences that arose out of different incidents, it will often be appropriate to impose a separate fine for each of the offences. The court should add up the fines for each offence and consider if they are just and proportionate. If the aggregate amount is not just and proportionate the court should consider whether all of the fines can be proportionately reduced. Separate fines should then be passed.

Where separate fines are passed, the court must be careful to ensure that there is no double-counting.

Where compensation is being ordered, that will need to be attributed to the relevant offence as will any necessary ancillary orders.”

**STEP NINE****Reasons**

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

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# Individuals

## Breach of food safety and food hygiene regulations

### England

#### Food Safety and Hygiene (England) Regulations 2013 (regulation 19(1))

Triable either way

**Maximum:** when tried on indictment: unlimited fine and/or 2 years' custody  
when tried summarily: unlimited fine

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### Wales

#### Food Hygiene (Wales) Regulations 2006 (regulation 17(1))

Triable either way

**Maximum:** when tried on indictment: unlimited fine and/or 2 years' custody  
when tried summarily: unlimited fine

#### The General Food Regulations 2004 (regulation 4)

Triable either way

**Maximum:** when tried on indictment: unlimited fine and/or 2 years' custody  
when tried summarily: unlimited fine and/or 6 months' custody

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**Offence range:** Conditional discharge – 18 months' custody

**STEP ONE****Determining the offence category**

The court should determine the offence category using only the culpability and harm factors in the tables below. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting to make an overall assessment.

**Culpability****Very high**

Where the offender intentionally breached, or flagrantly disregarded, the law

**High**

Actual foresight of, or wilful blindness to, risk of offending but risk nevertheless taken

**Medium**

Offence committed through act or omission which a person exercising reasonable care would not commit

**Low**

Offence committed with little fault, for example, because:

- significant efforts were made to address the risk although they were inadequate on this occasion
- there was no warning/circumstance indicating a risk to food safety
- failings were minor and occurred as an isolated incident

**Harm**

The table below contains factors relating to both actual harm and risk of harm. Dealing with a **risk of harm** involves consideration of both the likelihood of harm occurring and the extent of it if it does.

Harm	
<b>Category 1</b>	<ul style="list-style-type: none"> <li>• Serious adverse effect(s) on individual(s) and/or having a widespread impact</li> <li>• High risk of an adverse effect on individual(s) – including where supply was to persons that are vulnerable</li> </ul>
<b>Category 2</b>	<ul style="list-style-type: none"> <li>• Adverse effect on individual(s) (not amounting to Category 1)</li> <li>• Medium risk of an adverse effect on individual(s) or low risk of serious adverse effect</li> <li>• Regulator and/or legitimate industry substantially undermined by offender's activities</li> <li>• Relevant authorities unable to trace products in order to investigate risks to health, or are otherwise inhibited in identifying or addressing risks to health</li> <li>• Consumer misled regarding food's compliance with religious or personal beliefs</li> </ul>
<b>Category 3</b>	<ul style="list-style-type: none"> <li>• Low risk of an adverse effect on individual(s)</li> <li>• Public misled about the specific food consumed, but little or no risk of actual adverse effect on individual(s)</li> </ul>

**STEP TWO****Starting point and category range**

Having determined the category, the court should refer to the starting points on the next page to reach a sentence within the category range. The court should then consider further adjustment within the category range for aggravating and mitigating features.

## Obtaining financial information

In setting a fine, the court may conclude that the offender is able to pay any fine imposed unless the offender has supplied any financial information to the contrary. It is for the offender to disclose to the court such data relevant to his financial position as will enable it to assess what he can reasonably afford to pay. If necessary, the court may compel the disclosure of an individual offender's financial circumstances pursuant to section 162 of the Criminal Justice Act 2003. In the absence of such disclosure, or where the court is not satisfied that it has been given sufficient reliable information, the court will be entitled to draw reasonable inferences as to the offender's means from evidence it has heard and from all the circumstances of the case **which may include the inference that the offender can pay any fine.**

## Starting points and ranges

Where the range includes a potential sentence of custody, the court should consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

Where the range includes a potential sentence of a community order, the court should consider the community order threshold as follows:

- has the community order threshold been passed?

**Even where the community order threshold has been passed, a fine will normally be the most appropriate disposal.** Or, consider, if wishing to remove economic benefit derived through the commission of the offence, combining a fine with a community order.

	Starting point	Range
<b>Very high culpability</b>		
Harm category 1	9 months' custody	Band F fine – 18 months' custody
Harm category 2	Band F fine	Band E fine – 9 months' custody
Harm category 3	Band E fine	Band D fine – 26 weeks' custody
<b>High culpability</b>		
Harm category 1	Band F fine	Band E fine – 9 months' custody
Harm category 2	Band E fine	Band D fine – 26 weeks' custody
Harm category 3	Band D fine	Band C fine – Band E fine
<b>Medium culpability</b>		
Harm category 1	Band E fine	Band D fine – Band F fine
Harm category 2	Band D fine	Band C fine – Band E fine
Harm category 3	Band C fine	Band B fine – Band C fine
<b>Low culpability</b>		
Harm category 1	Band C fine	Band B fine – Band C fine
Harm category 2	Band B fine	Band A fine – Band B fine
Harm category 3	Band A fine	Conditional discharge – Band A fine

**Note on statutory maxima on summary conviction.** For offences under *regulation 19(1) Food Safety and Hygiene (England) Regulations 2013* and *regulation 17(1) Food Hygiene (Wales) Regulations 2006*, the maximum sentence magistrates may pass on summary conviction is an unlimited fine; therefore for these offences, magistrates may not pass a community order. *Regulation 4 of The General Food Regulations 2004* is in force in Wales but not in England. For offences under *regulation 4*, the maximum sentence on summary conviction is 6 months' custody and/or an unlimited fine.

The table below contains a **non-exhaustive** list of 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 starting point. **In particular, relevant recent convictions are likely to result in a substantial upward adjustment.** In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness	Factors reducing seriousness or reflecting personal mitigation
<i>Statutory aggravating factors:</i>	No previous convictions <b>or</b> no relevant/recent convictions
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	Steps voluntarily taken to remedy problem
Offence committed whilst on bail	High level of co-operation with the investigation, beyond that which will always be expected
<i>Other aggravating factors include:</i>	Good food safety/hygiene record
Motivated by financial gain	Self-reporting, co-operation and acceptance of responsibility
Deliberate concealment of illegal nature of activity	Good character and/or exemplary conduct
Established evidence of wider/community impact	Mental disorder or learning disability, where linked to the commission of the offence
Breach of any court order	Serious medical conditions requiring urgent, intensive or long-term treatment
Obstruction of justice	Age and/or lack of maturity where it affects the responsibility of the offender
Poor food safety or hygiene record	Sole or primary carer for dependent relatives
Refusal of free advice or training	

See page 441.

### STEP THREE

#### Review any financial element of the sentence

Where the sentence is or includes a fine, the court should 'step back' and, using the factors set out in step three, review whether the sentence as a whole meets the objectives of sentencing for these offences. The court may increase or reduce the proposed fine reached at step two, if necessary moving outside of the range.

Full regard should be given to the totality principle at step seven where multiple offences are involved.

#### General principles to follow in setting a fine

The court should finalise the appropriate level of fine in accordance with section 164 of the Criminal Justice Act 2003, which requires that the fine must reflect the seriousness of the offence and that the court must take into account the financial circumstances of the offender.

The level of fine should reflect the extent to which the offender fell below the required standard. **The fine should meet, in a fair and proportionate way, the objectives of punishment, deterrence and the removal of gain derived through the commission of the offence;** it should not be cheaper to offend than to take the appropriate precautions.

#### Review of the fine

Where the court proposes to impose a fine it should 'step back', review and, if necessary, adjust the initial fine reached at step two to **ensure that it fulfils the general principles** set out above.

Any quantifiable economic benefit derived from the offence, including through avoided costs or operating savings, should normally be added to the total fine arrived at in step two. Where this is not readily available, the court may draw on information available from enforcing authorities and others about the general costs of operating within the law.

In finalising the sentence, the court should have regard to the following factors relating to the wider impacts of the fine on innocent third parties; such as (but not limited to):

- impact of the fine on offender's ability to comply with the law;
- impact of the fine on employment of staff, service users, customers and local economy.



**STEP FOUR****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 FIVE****Reduction for guilty pleas**

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

**STEP SIX****Compensation and ancillary orders****Ancillary orders**

In all cases the court must consider whether to make ancillary orders. These may include:

***Hygiene Prohibition Order***

These orders are available under both the Food Safety and Hygiene (England) Regulations 2013 and the Food Hygiene (Wales) Regulations 2006.

If the court is satisfied that the health risk condition in Regulation 7(2) is fulfilled it **shall** impose the appropriate prohibition order in Regulation 7(3).

Where a food business operator is convicted of an offence under the Regulations and the court thinks it proper to do so in all the circumstances of the case, the court **may** impose a prohibition on the operator pursuant to Regulation 7(4). An order under Regulation 7(4) is not limited to cases where there is an immediate risk to public health; the court might conclude that there is such a risk of some future breach of the regulations or the facts of any particular offence or combination of offences may alone justify the imposition of a Hygiene Prohibition Order. In deciding whether to impose an order the court will want to consider the history of convictions or a failure to heed warnings or advice in deciding whether an order is proportionate to the facts of the case. Deterrence may also be an important consideration.

***Disqualification of director***

An offender may be disqualified from being a director of a company in accordance with section 2 of the Company Directors Disqualification Act 1986. The maximum period of disqualification is 15 years (Crown Court) or 5 years (magistrates' court).

**Compensation**

Where the offence results in loss or damage the court must consider whether to make a compensation order. If compensation is awarded, priority should be given to the payment of compensation over payment of any other financial penalty where the means of the offender are limited.

Where the offender does not have sufficient means to pay the total financial penalty considered appropriate by the court, compensation and fine take priority over prosecution costs.

**STEP SEVEN****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 offending behaviour in accordance with the *Offences Taken into Consideration and Totality* guideline.

Where the offender is convicted of more than one offence where a fine is appropriate, the court should consider the following guidance from the definitive guideline on *Offences Taken into Consideration and Totality*.

“The total fine is inevitably cumulative.

The court should determine the fine for each individual offence based on the seriousness of the offence and taking into account the circumstances of the case including the financial circumstances of the offender so far as they are known, or appear, to the court.

The court should add up the fines for each offence and consider if they are just and proportionate.

If the aggregate total is not just and proportionate the court should consider how to reach a just and proportionate fine. There are a number of ways in which this can be achieved.

*For example:*

- where an offender is to be fined for two or more offences that arose out of the same incident or where there are multiple offences of a repetitive kind, especially when committed against the same person, it will often be appropriate to impose for the most serious offence a fine which reflects the totality of the offending where this can be achieved within the maximum penalty for that offence. No separate penalty should be imposed for the other offences;
- where an offender is to be fined for two or more offences that arose out of different incidents, it will often be appropriate to impose a separate fine for each of the offences. The court should add up the fines for each offence and consider if they are just and proportionate. If the aggregate amount is not just and proportionate the court should consider whether all of the fines can be proportionately reduced. Separate fines should then be passed.

Where separate fines are passed, the court must be careful to ensure that there is no double-counting.

Where compensation is being ordered, that will need to be attributed to the relevant offence as will any necessary ancillary orders.”

**STEP EIGHT****Reasons**

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

**STEP NINE****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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**Owner or person in charge of a dog dangerously out of control in any place in England or Wales (whether or not a public place) where death is caused**  
Dangerous Dogs Act 1991 (section 3 (1))

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**Triable either way**

**Maximum: 14 years' custody**

**Offence range: High level community order – 14 years' custody**

**STEP ONE****Determining the offence category**

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

The level of culpability is determined by weighing up all the factors of the case. **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**

Dog used as a weapon or to intimidate people

Dog known to be prohibited

Dog trained to be aggressive

Offender disqualified from owning a dog, or failed to respond to official warnings, or to comply with orders concerning the dog

**B – Medium culpability**

All other cases where characteristics for categories A or C are not present, and in particular:

Failure to respond to warnings or concerns expressed by others about the dog's behaviour

Failure to act on prior knowledge of the dog's aggressive behaviour

Lack of safety or control measures taken in situations where an incident could reasonably have been foreseen

Failure to intervene in the incident (where it would have been reasonable to do so)

Ill treatment or failure to ensure welfare needs of the dog (where connected to the offence and where not charged separately)

**C – Lesser culpability**

Attempts made to regain control of the dog and/or intervene

Provocation of the dog without fault of the offender

Evidence of safety or control measures having been taken

Incident could not have reasonably been foreseen by the offender

Momentary lapse of control/attention

**HARM**

There is no variation in the level of harm caused, as by definition the harm involved in an offence where a death is caused is always of the utmost seriousness.

**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.

<b>High culpability</b>	<b>Starting point</b> 8 years' custody	<b>Category range</b> 6 – 14 years' custody
<b>Medium culpability</b>	<b>Starting point</b> 4 years' custody	<b>Category range</b> 2 – 7 years' custody
<b>Lesser culpability</b>	<b>Starting point</b> 1 year's custody	<b>Category range</b> High level community order – 2 years' custody

**The table is for single offences. Concurrent sentences reflecting the overall criminality of offending will ordinarily be appropriate where offences arise out of the same incident or facts: please refer to the *Offences Taken into Consideration and Totality* guideline.**

The court should then consider any adjustment for any aggravating or mitigating factors. On the next page is 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 starting point.

See page 448.

### 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

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

#### *Other aggravating factors:*

Victim is a child or otherwise vulnerable because of personal circumstances

Location of the offence

Sustained or repeated attack

Significant ongoing effect on witness(es) to the attack

Serious injury caused to others (where not charged separately)

Allowing person insufficiently experienced or trained, to be in charge of the dog

Lack or loss of control of the dog due to influence of alcohol or drugs

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

Injury to other animals

Established evidence of community/wider impact

Failure to comply with current court orders (except where taken into account in assessing culpability)

Offence committed on licence

Offences taken into consideration

### Factors reducing seriousness or reflecting personal mitigation:

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

No previous complaints against, or incidents involving the dog

Evidence of responsible ownership

Remorse

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

Sole or primary carer for dependent relatives

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

**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 potential 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**

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****Compensation and ancillary orders**

In all cases, the court must consider whether to make a compensation order and/or other ancillary orders.

**Compensation order**

The court should consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

**Other ancillary orders available include:****Disqualification from having a dog**

The court **may** disqualify the offender from having custody of a dog. The test the court should consider is whether the offender is a fit and proper person to have custody of a dog.

**Destruction order/contingent destruction order**

In any case where the offender is not the owner of the dog, the owner must be given an opportunity to be present and make representations to the court.

If the dog is a **prohibited dog** refer to the guideline for possession of a prohibited dog in relation to destruction/contingent destruction orders.



The court **shall** make a destruction order unless the court is satisfied that the dog would not constitute a danger to public safety.

In reaching a decision, the court should consider the relevant circumstances which **must** include:

- the temperament of the dog and its past behaviour;
- whether the owner of the dog, or the person for the time being in charge of it is a fit and proper person to be in charge of the dog;

and **may** include:

- other relevant circumstances.

If the court is satisfied that the dog would not constitute a danger to public safety and the dog is not prohibited, it **may** make a contingent destruction order requiring the dog be kept under proper control. A contingent destruction order may specify the measures to be taken by the owner for keeping the dog under proper control, which include:

- muzzling;
- keeping on a lead;
- neutering in appropriate cases; and
- excluding it from a specified place.

Where the court makes a destruction order, it **may** appoint a person to undertake destruction and order the offender to pay what it determines to be the reasonable expenses of destroying the dog and keeping it pending its destruction.

### ***Fit and proper person***

In determining whether a person is a fit and proper person to be in charge of a dog the following non-exhaustive factors may be relevant:

- any relevant previous convictions, cautions or penalty notices;
- the nature and suitability of the premises that the dog is to be kept at by the person;
- where the police have released the dog pending the court's decision whether the person has breached conditions imposed by the police; and
- any relevant previous breaches of court 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.

**Owner or person in charge of a dog dangerously out of control in any place in England or Wales (whether or not a public place) where a person is injured**  
**Dangerous Dogs Act 1991 (section 3 (1))**

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**Triable either way**

**Maximum: 5 years' custody**

**Offence range: Discharge – 4 years' custody**

**STEP ONE**  
**Determining the offence category**

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

The level of culpability is determined by weighing up all the factors of the case. **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**

- Dog used as a weapon or to intimidate people
- Dog known to be prohibited
- Dog trained to be aggressive
- Failure to respond to official warnings or to comply with orders concerning the dog
- Offender disqualified from owning a dog, or failed to respond to official warnings, or to comply with orders concerning the dog

**B – Medium culpability**

- All other cases where characteristics for categories A or C are not present, and in particular:
  - Failure to respond to warnings or concerns expressed by others about the dog’s behaviour
  - Failure to act on prior knowledge of the dog’s aggressive behaviour
  - Lack of safety or control measures taken in situations where an incident could reasonably have been foreseen
  - Failure to intervene in the incident (where it would have been reasonable to do so)
  - Ill treatment or failure to ensure welfare needs of the dog (where connected to the offence and where not charged separately)

**C – Lesser culpability**

- Attempts made to regain control of the dog and/or intervene
- Provocation of the dog without fault of the offender
- Evidence of safety or control measures having been taken
- Incident could not have reasonably been foreseen by the offender
- Momentary lapse of control/attention

**HARM**  
 The level of **harm** is assessed by weighing up all the factors of the case.

<b>Category 1</b>	Serious injury (which includes disease transmission)
	Serious psychological harm
<b>Category 2</b>	Harm that falls between categories 1 and 3
<b>Category 3</b>	Minor injury and no significant psychological harm

**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.

Harm	Culpability		
	A	B	C
Category 1	<b>Starting point</b> 3 years' custody	<b>Starting point</b> 1 year 6 months' custody	<b>Starting point</b> High level community order
	<b>Category range</b> 2 years 6 months' – 4 years' custody	<b>Category range</b> 6 months' – 2 years 6 months' custody	<b>Category range</b> Medium level community order – 6 months' custody
Category 2	<b>Starting point</b> 2 years' custody	<b>Starting point</b> 6 months' custody	<b>Starting point</b> Band C fine
	<b>Category range</b> 1 year – 3 years' custody	<b>Category range</b> Medium level community order – 1 year's custody	<b>Category range</b> Band B fine – High level community order
Category 3	<b>Starting point</b> 6 months' custody	<b>Starting point</b> Low level community order	<b>Starting point</b> Band B fine
	<b>Category range</b> High level community order – 1 year 6 months' custody	<b>Category range</b> Band C fine – 6 months' custody	<b>Category range</b> Discharge – Band C fine

**The table is for single offences. Concurrent sentences reflecting the overall criminality of offending will ordinarily be appropriate where offences arise out of the same incident or facts: please refer to the *Offences Taken into Consideration and Totality* guideline.**

The court should then consider any adjustment for any aggravating or mitigating factors. On the next page is 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 starting point.

### 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

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.

#### *Other aggravating factors:*

Victim is a child or otherwise vulnerable because of personal circumstances

Location of the offence

Sustained or repeated attack

Significant ongoing effect on witness(es) to the attack

Serious injury caused to others (where not charged separately)

Significant practical and financial effects of offence on relatives/carers

Allowing person insufficiently experienced or trained, to be in charge of the dog

Lack or loss of control of dog due to influence of alcohol or drugs

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

Injury to other animals

Established evidence of community/wider impact

Failure to comply with current court orders (except where taken into account in assessing culpability)

Offence committed on licence

Offences taken into consideration

### Factors reducing seriousness or reflecting personal mitigation

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

Isolated incident

No previous complaints against, or incidents involving the dog

Evidence of responsible ownership

Remorse

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

Sole or primary carer for dependent relatives

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

**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 potential 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**

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****Compensation and ancillary orders**

In all cases, the court must consider whether to make a compensation order and/or other ancillary orders.

***Compensation order***

The court should consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

**Other ancillary orders available include:*****Disqualification from having a dog***

The court **may** disqualify the offender from having custody of a dog. The test the court should consider is whether the offender is a fit and proper person to have custody of a dog.

***Destruction order/contingent destruction order***

In any case where the offender is not the owner of the dog, the owner must be given an opportunity to be present and make representations to the court.

If the dog is a **prohibited dog** refer to the guideline for possession of a prohibited dog in relation to destruction/contingent destruction orders.

The court **shall** make a destruction order unless the court is satisfied that the dog would not constitute a danger to public safety.

In reaching a decision, the court should consider the relevant circumstances which **must** include:

- the temperament of the dog and its past behaviour;
- whether the owner of the dog, or the person for the time being in charge of it is a fit and proper person to be in charge of the dog;

and **may** include:

- other relevant circumstances.

If the court is satisfied that the dog would not constitute a danger to public safety and the dog is not prohibited, it **may** make a contingent destruction order requiring the dog be kept under proper control. A contingent destruction order may specify the measures to be taken by the owner for keeping the dog under proper control, which include:

- muzzling;
- keeping on a lead;
- neutering in appropriate cases; and
- excluding it from a specified place.

Where the court makes a destruction order, it **may** appoint a person to undertake destruction and order the offender to pay what it determines to be the reasonable expenses of destroying the dog and keeping it pending its destruction.

### ***Fit and proper person***

In determining whether a person is a fit and proper person to be in charge of a dog the following non-exhaustive factors may be relevant:

- any relevant previous convictions, cautions or penalty notices;
- the nature and suitability of the premises that the dog is to be kept at by the person;
- where the police have released the dog pending the court's decision whether the person has breached conditions imposed by the police; and
- any relevant previous breaches of court 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.

**Owner or person in charge of a dog  
dangerously out of control in any place  
in England or Wales (whether or not a  
public place) where an assistance dog  
is injured or killed**  
**Dangerous Dogs Act 1991 (section 3 (1))**

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**Triable either way**

**Maximum: 3 years' custody**

**Offence range: Discharge – 2 years 6 months' custody**



**STEP ONE**  
**Determining the offence category**

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

The level of culpability is determined by weighing up all the factors of the case. **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**
- Dog used as a weapon or to intimidate people or dogs
  - Dog known to be prohibited
  - Dog trained to be aggressive
  - Offender disqualified from owning a dog, or failed to respond to official warnings, or to comply with orders concerning the dog
  - Offence motivated by, or demonstrating hostility to the victim (assisted person) based on the victim’s disability (or presumed disability)

- B – Medium culpability**
- All other cases where characteristics for categories A or C are not present, and in particular:
- Failure to respond to warnings or concerns expressed by others about the dog’s behaviour
  - Failure to act on prior knowledge of the dog’s aggressive behaviour
  - Lack of safety or control measures taken in situations where an incident could reasonably have been foreseen
  - Failure to intervene in the incident (where it would have been reasonable to do so)
  - Ill treatment or failure to ensure welfare needs of the dog (where connected to the offence and where not charged separately)

- C – Lesser culpability**
- Attempts made to regain control of the dog and/or intervene
  - Provocation of the dog without fault of the offender
  - Evidence of safety or control measures having been taken
  - Incident could not have reasonably been foreseen by the offender
  - Momentary lapse of control/attention

**HARM**  
 The level of **harm** is assessed by weighing up all the factors of the case.

<b>Category 1</b>	Fatality or serious injury to an assistance dog and/or Serious impact on the assisted person (whether psychological or other harm caused by the offence)
<b>Category 2</b>	Harm that falls between categories 1 and 3
<b>Category 3</b>	Minor injury to assistance dog and impact of the offence on the assisted person is limited

**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.

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

The court should then consider any adjustment for any aggravating or mitigating factors. On the next page is 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 starting point.

### 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

Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, sexual orientation or transgender identity

#### *Other aggravating factors:*

Location of the offence

Sustained or repeated attack

Significant ongoing effect on witness(es) to the attack

Allowing person insufficiently experienced or trained, to be in charge of the dog

Lack or loss of control of the dog due to influence of alcohol or drugs

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

Injury to other animals

Cost of retraining an assistance dog

Established evidence of community/wider impact

Failure to comply with current court orders (except where taken into account in assessing culpability)

Offence committed on licence

Offences taken into consideration

### Factors reducing seriousness or reflecting personal mitigation

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

Isolated incident

No previous complaints against, or incidents involving the dog

Evidence of responsible ownership

Remorse

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

Sole or primary carer for dependent relatives

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

**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 potential 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**

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****Compensation and ancillary orders**

In all cases, the court must consider whether to make a compensation order and/or other ancillary orders.

**Compensation order**

The court should consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

**Other ancillary orders available include:****Disqualification from having a dog**

The court **may** disqualify the offender from having custody of a dog. The test the court should consider is whether the offender is a fit and proper person to have custody of a dog.

**Destruction order/contingent destruction order**

In any case where the offender is not the owner of the dog, the owner must be given an opportunity to be present and make representations to the court.

If the dog is a **prohibited dog** refer to the guideline for possession of a prohibited dog in relation to destruction/contingent destruction orders.

The court **shall** make a destruction order unless the court is satisfied that the dog would not constitute a danger to public safety.

In reaching a decision, the court should consider the relevant circumstances which **must** include:

- the temperament of the dog and its past behaviour;
- whether the owner of the dog, or the person for the time being in charge of it is a fit and proper person to be in charge of the dog;

and **may** include:

- other relevant circumstances.

If the court is satisfied that the dog would not constitute a danger to public safety and the dog is not prohibited, it **may** make a contingent destruction order requiring the dog be kept under proper control. A contingent destruction order may specify the measures to be taken by the owner for keeping the dog under proper control, which include:

- muzzling;
- keeping on a lead;
- neutering in appropriate cases; and
- excluding it from a specified place.

Where the court makes a destruction order, it **may** appoint a person to undertake destruction and order the offender to pay what it determines to be the reasonable expenses of destroying the dog and keeping it pending its destruction.

### ***Fit and proper person***

In determining whether a person is a fit and proper person to be in charge of a dog the following non-exhaustive factors may be relevant:

- any relevant previous convictions, cautions or penalty notices;
- the nature and suitability of the premises that the dog is to be kept at by the person;
- where the police have released the dog pending the court's decision whether the person has breached conditions imposed by the police; and
- any relevant previous breaches of court 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.

# Owner or person in charge of a dog dangerously out of control in any place in England or Wales (whether or not a public place)

Dangerous Dogs Act 1991 (section 3 (1))

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**Triable only summarily**

**Maximum: 6 months' custody**

**Offence range: Discharge – 6 months' custody**

**STEP ONE**  
**Determining the offence category**

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

The level of culpability is determined by weighing up all the factors of the case. **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**
- Dog used as a weapon or to intimidate people
  - Dog known to be prohibited
  - Dog trained to be aggressive
  - Offender disqualified from owning a dog, or failed to respond to official warnings, or to comply with orders concerning the dog

- B – Lower culpability**
- Attempts made to regain control of the dog and/or intervene
  - Provocation of dog without fault of the offender
  - Evidence of safety or control measures having been taken
  - Incident could not have reasonably been foreseen by the offender
  - Momentary lapse of control/attention

**HARM**  
 The level of harm is assessed by weighing up all the factors of the case.

<b>Greater harm</b>	Presence of children or others who are vulnerable because of personal circumstances
	Injury to other animals
<b>Lesser harm</b>	Low risk to the public

**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.

Harm	Culpability	
	A	B
<b>Greater harm</b>	<b>Starting point</b> Medium level community order	<b>Starting point</b> Band B fine
	<b>Category range</b> Band C fine – 6 months’ custody	<b>Category range</b> Band A fine – Band C fine
<b>Lesser harm</b>	<b>Starting point</b> Band C fine	<b>Starting point</b> Band A fine
	<b>Category range</b> Band B fine – Low level community order	<b>Category range</b> Discharge – Band B fine

The court should then consider any adjustment for any aggravating or mitigating factors. On the next page is 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 starting point.



### 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

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

#### *Other aggravating factors:*

Location of the offence

Significant ongoing effect on the victim and/or others

Failing to take adequate precautions to prevent the dog from escaping

Allowing person insufficiently experienced or trained, to be in charge of the dog

Ill treatment or failure to ensure welfare needs of the dog (where connected to the offence and where not charged separately)

Lack or loss of control of the dog due to influence of alcohol or drugs

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

Established evidence of community/wider impact

Failure to comply with current court orders (unless this has already been taken into account in assessing culpability)

Offence committed on licence

Offences taken into consideration

### Factors reducing seriousness or reflecting personal mitigation

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

Isolated incident

No previous complaints against, or incidents involving the dog

Evidence of responsible ownership

Remorse

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

Sole or primary carer for dependent relatives

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

**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 potential 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**

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****Compensation and ancillary orders**

In all cases, the court must consider whether to make a compensation order and/or other ancillary orders.

***Compensation order***

The court should consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

**Other ancillary orders available include:*****Disqualification from having a dog***

The court **may** disqualify the offender from having custody of a dog. The test the court should consider is whether the offender is a fit and proper person to have custody of a dog.

***Destruction order/contingent destruction order***

In any case where the offender is not the owner of the dog, the owner must be given an opportunity to be present and make representations to the court.

If the dog is a **prohibited dog** refer to the guideline for possession of a prohibited dog in relation to destruction/contingent destruction orders.

If the dog is not prohibited and the court is satisfied that the dog would constitute a danger to public safety the court **may** make a destruction order.

In reaching a decision, the court should consider the relevant circumstances which **must** include:

- the temperament of the dog and its past behaviour;
- whether the owner of the dog, or the person for the time being in charge of it is a fit and proper person to be in charge of the dog;

and **may** include:

- other relevant circumstances.

If the court is satisfied that the dog would not constitute a danger to public safety and the dog is not prohibited, it **may** make a contingent destruction order requiring the dog be kept under proper control. A contingent destruction order may specify the measures to be taken by the owner for keeping the dog under proper control, which include:

- muzzling;
- keeping on a lead;
- neutering in appropriate cases; and
- excluding it from a specified place.

Where the court makes a destruction order, it **may** appoint a person to undertake destruction and order the offender to pay what it determines to be the reasonable expenses of destroying the dog and keeping it pending its destruction.

### ***Fit and proper person***

In determining whether a person is a fit and proper person to be in charge of a dog the following non-exhaustive factors may be relevant:

- any relevant previous convictions, cautions or penalty notices;
- the nature and suitability of the premises that the dog is to be kept at by the person;
- where the police have released the dog pending the court's decision whether the person has breached conditions imposed by the police; and
- any relevant previous breaches of court 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.

# Possession of a prohibited dog

Dangerous Dogs Act 1991 (section 1 (7))

# Breeding, selling, exchanging or

# advertising a prohibited dog

Dangerous Dogs Act 1991 (section 1 (7))

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**Triable only summarily**

**Maximum: 6 months' custody**

**Offence range: Discharge – 6 months' custody**

**STEP ONE**  
**Determining the offence category**

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

The level of culpability is determined by weighing up all the factors of the case. **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:**

<b>A – Higher culpability:</b>	
Possessing a dog known to be prohibited	
Breeding from a dog known to be prohibited	
Selling, exchanging or advertising a dog known to be prohibited	
Offence committed for gain	
Dog used to threaten or intimidate	
Permitting fighting	
Training and/or possession of paraphernalia for dog fighting	
<b>B – Lower culpability:</b>	
All other cases	

<b>HARM</b>	
The level of harm is assessed by weighing up all the factors of the case.	
<b>Greater harm</b>	High risk to the public and/or animals
<b>Lesser harm</b>	Low risk to the public and/or animals

See page 471.

**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.

Harm	Culpability	
	A	B
<b>Greater harm</b>	<b>Starting point</b> Medium level community order	<b>Starting point</b> Band B fine
	<b>Category range</b> Band C fine – 6 months’ custody	<b>Category range</b> Band A fine – Low level community order
<b>Lesser harm</b>	<b>Starting point</b> Band C fine	<b>Starting point</b> Band A fine
	<b>Category range</b> Band B fine – Medium level community order	<b>Category range</b> Discharge – Band B fine

See page 472.

The court should then consider any adjustment for any aggravating or mitigating factors. Below is 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 starting point.

#### 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:*

Presence of children or others who are vulnerable because of personal circumstances

Ill treatment or failure to ensure welfare needs of the dog (where connected to the offence and where not charged separately)

Established evidence of community/wider impact

Failure to comply with current court orders

Offence committed on licence

Offences taken into consideration

#### Factors reducing seriousness or reflecting personal mitigation

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

Unaware that dog was prohibited type despite reasonable efforts to identify type

Evidence of safety or control measures having been taken by owner

Prosecution results from owner notification

Evidence of responsible ownership

Remorse

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

Sole or primary carer for dependent relatives

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

Lapse of time since the offence where this is not the fault of the offender

**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 potential 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**

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****Compensation and ancillary orders**

In all cases, the court must consider whether to make a compensation order and/or other ancillary orders.

***Compensation order***

The court should consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

**Other ancillary orders available include:*****Disqualification from having a dog***

The court **may** disqualify the offender from having custody of a dog for such period as it thinks fit. The test the court should consider is whether the offender is a fit and proper person to have custody of a dog.

***Destruction order/contingent destruction order***

In any case where the offender is not the owner of the dog, the owner must be given an opportunity to be present and make representations to the court.

The court **shall** make a destruction order unless the court is satisfied that the dog would not constitute a danger to public safety.



In reaching a decision, the court should consider the relevant circumstances which **must** include:

- the temperament of the dog and its past behaviour;
- whether the owner of the dog, or the person for the time being in charge of it is a fit and proper person to be in charge of the dog;

and **may** include:

- other relevant circumstances.

If the court is satisfied that the dog would not constitute a danger to public safety, it **shall** make a contingent destruction order requiring that the dog be exempted from the prohibition on possession or custody within the requisite period.

Where the court makes a destruction order, it **may** appoint a person to undertake destruction and order the offender to pay what it determines to be the reasonable expenses of destroying the dog and keeping it pending its destruction.

### ***Fit and proper person***

In determining whether a person is a fit and proper person to be in charge of a dog the following non-exhaustive factors may be relevant:

- any relevant previous convictions, cautions or penalty notices;
- the nature and suitability of the premises that the dog is to be kept at by the person;
- where the police have released the dog pending the court's decision whether the person has breached conditions imposed by the police; and
- any relevant previous breaches of court orders.

Note: the court must be satisfied that the person who is assessed by the court as a fit and proper person can demonstrate that they are the owner or the person ordinarily in charge of that dog at the time the court is considering whether the dog is a danger to public safety. Someone who has previously not been in charge of the dog should not be considered for this assessment because it is an offence under the Dangerous Dogs Act 1991 to make a gift of a prohibited dog.

## **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.

# Sentencing structure

## 1. Offence seriousness (culpability and harm)

### A. Identify the appropriate starting point

- Consider which of the examples of offence activity corresponds most closely to the circumstances of the case to identify the appropriate **starting point**.
- Starting points are based on a **first time offender pleading not guilty**.
- Refer to the following where starting point is, or **range** includes, a:
  - (i) fine – pages 148-155;
  - (ii) community order – pages 160-162;
  - (iii) custodial sentence – pages 163-164.
- Refer to pages 145-146 for the meaning of the terms ‘starting point’, ‘range’ and ‘first time offender’.

## 1. Offence seriousness (culpability and harm)

### B. Consider the effect of aggravating and mitigating factors

- Move up or down from the starting point to reflect aggravating or mitigating factors that affect the seriousness of the offence to reach a provisional sentence.
- Common aggravating and mitigating factors are set out overleaf; relevant factors are also identified in the individual offence guidelines. **These lists are not exhaustive**.
- Do not double-count any aggravating or mitigating factors in the description of the activity used to reach the starting point.
- The **range** is the bracket into which the provisional sentence will normally fall but the court is not precluded from going outside the range where the facts justify it.
- Previous convictions which aggravate the seriousness of the current offence may take the provisional sentence beyond the range, especially if there are significant other aggravating factors present.

## 2. Form a preliminary view of the appropriate sentence, then consider offender mitigation

- Matters of offender mitigation may include remorse and admissions to police in interview.

## 3. Consider a reduction for a guilty plea

- Apply the sliding scale reduction for a guilty plea to punitive elements of the sentence - refer to page 17.
- Application of the reduction may take the sentence below the range in some cases.

## 4. Consider ancillary orders, including compensation

- Refer to pages 168-174 and Annex A for guidance on available ancillary orders.
- Consider compensation in every case where the offending has resulted in personal injury, loss or damage – give reasons if order not made – see pages 165-167.

## 5. Decide sentence

### Give reasons

- Review the total sentence to ensure that it is proportionate to the offending behaviour and properly balanced.
- Give reasons for the sentence passed, including any ancillary orders.
- State if the sentence has been reduced to reflect a guilty plea; indicate what the sentence would otherwise have been.
- Explain if the sentence is of a different kind or outside the range indicated in the guidelines.

# **List of aggravating and mitigating factors**

## **Taken from Sentencing Guidelines Council Guideline**

### ***Overarching Principles: Seriousness***

#### **Aggravating factors**

##### **Factors indicating higher culpability:**

- Offence committed whilst on bail for other offences
- Failure to respond to previous sentences
- Offence was racially or religiously aggravated
- Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)
- Offence motivated by, or demonstrating, hostility based on the victim's disability (or presumed disability)
- Previous conviction(s), particularly where a pattern of repeat offending is disclosed
- Planning of an offence
- An intention to commit more serious harm than actually resulted from the offence
- Offenders operating in groups or gangs
- 'Professional' offending
- Commission of the offence for financial gain (where this is not inherent in the offence itself)
- High level of profit from the offence
- An attempt to conceal or dispose of evidence
- Failure to respond to warnings or concerns expressed by others about the offender's behaviour
- Offence committed whilst on licence
- Offence motivated by hostility towards a minority group, or a member or members of it
- Deliberate targeting of vulnerable victim(s)
- Commission of an offence while under the influence of alcohol or drugs
- Use of a weapon to frighten or injure victim
- Deliberate and gratuitous violence or damage to property, over and above what is needed to carry out the offence
- Abuse of power
- Abuse of a position of trust

##### **Factors indicating a more than usually serious degree of harm:**

- Multiple victims
- An especially serious physical or psychological effect on the victim, even if unintended
- A sustained assault or repeated assaults on the same victim
- Victim is particularly vulnerable
- Location of the offence (for example, in an isolated place)
- Offence is committed against those working in the public sector or providing a service to the public
- Presence of others e.g. relatives, especially children or partner of the victim
- Additional degradation of the victim (e.g. taking photographs of a victim as part of a sexual offence)
- In property offences, high value (including sentimental value) of property to the victim, or substantial consequential loss (e.g. where the theft of equipment causes serious disruption to a victim's life or business)

#### **Mitigating factors**

##### **Factors indicating lower culpability:**

- A greater degree of provocation than normally expected
- Mental illness or disability
- Youth or age, where it affects the responsibility of the individual defendant
- The fact that the offender played only a minor role in the offence

#### **Offender mitigation**

- Genuine remorse
- Admissions to police in interview
- Ready co-operation with authorities

