

Fraud, Bribery and Money Laundering
Offences Guideline
Consultation

Fraud, Bribery and Money Laundering Offences Guideline Consultation

Published on 27 June 2013

The consultation will end on 4 October 2013

A consultation produced by the Sentencing Council.
This information is also available on the Sentencing Council's website:

www.sentencingcouncil.org.uk

About this consultation

To:

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

Duration:

From 27 June 2013 to 4 October 2013

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

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Additional ways to feed in your views:

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

www.sentencingcouncil.org.uk

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

Response paper:

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

www.sentencingcouncil.org.uk

Freedom of Information:

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

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

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Introduction

What is the Sentencing Council?

The Sentencing Council is the independent body responsible for developing sentencing guidelines for the courts to use when passing a sentence. The Council's remit extends only to allow consultation on the sentencing of offenders following conviction.¹

The Sentencing Council was created to bring together the functions of the two previous bodies, the Sentencing Guidelines Council (SGC) and Sentencing Advisory Panel (SAP). The Sentencing Council is a more streamlined body with a broader remit to take forward work on sentencing not only through guidelines but also through the development of a robust evidence base and engaging with the public to improve knowledge and understanding about sentences. The Council brings together wide experience in sentencing and comprises eight judicial members and six non-judicial members.

Why fraud offences?

When the Ministry of Justice was consulting on the introduction of Deferred Prosecution Agreements (DPAs) for dealing with corporate offenders involved in economic crime, it wrote to the Council in relation to a proposal that it was the appropriate body to issue guidance for the new DPAs system. A DPA is an agreement made between a prosecutor and an organisation under which a criminal prosecution is deferred pending compliance with terms and conditions that may include payment of substantial financial penalties.

The statutory function of the Council extends only to issuing guidelines on disposals following conviction; as DPAs do not fall within this remit it was not possible for the Council to produce such guidance without amending its statutory functions. In the event, the Council agreed to expedite its planned work on bribery, fraud and money laundering and to include within these guidelines guidance for sentencing both individual and corporate offenders. The guideline for offences committed by corporations included within this consultation is not a guideline for DPAs but may be used to inform the level of financial penalty that forms part of a DPA; paragraph 5(4) of Schedule 17 of the Crime and Courts Act 2013 provides that such a penalty should be broadly comparable to the likely fine that would be imposed following a conviction after a guilty plea and both prosecutors and organisations will be able to consider the guideline when determining the appropriate level.

Which offences are covered by the guideline?

The predecessor body to the Sentencing Council, the SGC, published definitive guidelines for fraud offences in October 2009. These guidelines were grouped by type of fraud: confidence fraud; possessing, making or supplying articles for use in frauds; banking and insurance fraud, and obtaining credit through fraud; benefit fraud; and revenue fraud. The draft guidelines are grouped in broadly the same way with the exception of confidence fraud and banking and insurance fraud which have been merged. For the first time, guidelines are proposed for bribery and money laundering and, within the revenue guideline, for the common law offence of cheating the revenue. Also for the first time each of the guidelines applies to sentencing offenders convicted of conspiracy to commit the substantive offence.

¹ ss.118–136 Coroners and Justice Act 2009

What is the Council consulting about?

The Council has produced this consultation paper in order to seek the views of as many people as possible interested in the sentencing of fraud, bribery and money laundering offences.

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

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

- the principal factors that make any of the offences included within the draft guideline more or less serious;
- the additional factors that should influence the sentence;
- the approach taken to structuring the draft guidelines;
- the sentences that should be passed for fraud, bribery and money laundering offences for both individuals and corporations; and
- anything else that you think should be considered.

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

What else is happening as part of the consultation process?

This is a 14 week public consultation. During the consultation period, the Council will host a number of consultation meetings to seek views from criminal justice organisations, other groups with an interest in this area as well as sentencers. We will also be conducting interviews with a sample of Crown Court judges, District Judges and magistrates to ascertain how they would apply the guideline and to identify whether the guideline presents any practical difficulties for sentencers. Once the consultation exercise is over and the results considered, a final guideline will be published and used by all adult courts.

Alongside this consultation paper, the Council has produced an online questionnaire which allows people to respond to the consultation questions through the Sentencing Council website. The Council has also produced a resource assessment and an equality impact assessment. The online questionnaire and these documents can be found on the Sentencing Council's website: www.sentencingcouncil.org.uk

Section one: Overarching issues and the context of the guidelines

Economic crime

Fraud is estimated to cost the UK economy £73 billion each year.² It is a hugely diverse area of crime and one that is constantly evolving. At the most serious level of offending the offences are often highly sophisticated and involve huge sums being defrauded over long periods. These offences may be committed in a wide range of ways but common examples are by way of direct or indirect tax evasion or excise duty fraud.

Frauds are often committed directly against individuals. Common examples include pyramid schemes, charging inflated costs for poor quality or unnecessary home repairs or tricking victims into divulging personal or financial details. Technology is increasingly exploited to facilitate frauds against individuals and corporations. Online shopping and banking is convenient and used regularly by many people as are social media and dating websites. Some fraudsters rely on this familiarity with technology and the large numbers of people who access the internet to commit offences.

Much is made in the media about the impact of benefit fraud. The majority of people receiving benefit payments do so honestly but when benefits are claimed fraudulently there is a considerable cost, both to the taxpayer and in terms of confidence in the benefits system. The latest Department of Work and Pensions fraud estimates show that out of a total benefit expenditure of £166.8 billion in 2012/13, £1.2 billion (or 0.7%) was overpaid due to fraud.³

Money laundering refers to the exchange of money or assets that were obtained criminally for money or other assets that are 'clean' and can therefore be legitimately spent. The goal of most offending is to make money. The more money that is made the more difficult it is for the offender to evade the authorities as large amounts of cash cause suspicion. It is not possible to estimate accurately how much money is laundered in England and Wales each year but as an offence that facilitates criminals benefiting from their crimes it is treated as very serious.

Bribery is defined as giving someone a financial or other advantage to encourage that person to perform their functions or activities improperly or to reward that person for having already done so. Offences can be committed by the payment or receiving of bribes either in the UK or overseas, or by a company failing to prevent individuals bribing others. Bribery has a wide range of negative effects including undermining democracy; distorting markets leading to higher prices and substandard goods or services; and encouraging organised crime and terrorism. Bribery is not a victimless crime and the issue of tackling bribery is a global one.

2 National Fraud Authority – Annual Fraud Indicator 2012

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/118530/annual-fraud-indicator-2012.pdf

3 http://statistics.dwp.gov.uk/asd/asd2/fem/FEM_1213P.pdf

Applicability of guidelines

In accordance with section 120 of the Coroners and Justice Act 2009, the Sentencing Council issues this draft guideline. Following consultation, when a definitive guideline is produced it will apply to all offenders aged 18 and older, who are sentenced on or after [a date to be specified], regardless of the date of the offence.

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

“Every court -

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

When issued as a definitive guideline this guideline will apply only to offenders aged 18 and older. General principles to be considered in the sentencing of youths are in the Sentencing Guidelines Council’s definitive guideline, *Overarching Principles – Sentencing Youths*.⁴

Structure, ranges and starting points

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

Starting points define the position within a category range from which to start calculating the provisional sentence. As in earlier Sentencing Council definitive guidelines, this guideline adopts an offence based starting point. Starting points apply to all offences within the corresponding category and are applicable to all offenders, in all cases. Once the starting point is established, the court should consider further aggravating and mitigating factors and previous convictions so as to adjust the sentence within the range. Starting points and ranges apply to all offenders, whether they have pleaded guilty or been convicted after trial. Credit for a guilty plea is taken into consideration only at step four⁵ in the decision making process, after the appropriate sentence has been identified.

Information on community orders and fine bands is set out at Annex D.

⁴ http://sentencingcouncil.judiciary.gov.uk/docs/web_overarching_principles_sentencing_youths.pdf

⁵ step six in the corporate guideline

The guideline in relation to current practice and existing guidelines

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

The Council considered available statistical data for the offences covered in the guideline and relevant case law. There is some evidence that current sentencing practice does not reflect the existing SGC guideline. The approach that has been taken in developing the draft guideline aims to regularise practice rather than to substantially alter it. The available data on current sentencing practice held by the Ministry of Justice was not a reliable basis for developing the majority of the guidelines due to the way offences are grouped. For example, a wide range of offending may be charged under section 1 Fraud Act 2006, but it is not possible to extract any information about the type of fraud committed or the financial amount involved. For other offences the Ministry of Justice data provided a much clearer picture of current practice.

Where there is no current guideline, as with money laundering, it is not possible to test the consistency of the draft guideline with current sentencing practice other than through analysis of reported cases which are not wholly representative, but the Council does not intend to affect the overall level of sentencing for these offences.

With regard to bribery offences, the extremely limited number of sentences passed and lack of an existing guideline does not allow for any analysis of current practice. The Council has proposed sentence ranges and starting points at similar levels as for confidence and banking fraud.

Cases of fraud, bribery or money laundering that involve vast sums often attract attention, but the Council does not give guidance only for those cases. The majority of cases that are sentenced in both the magistrates' and Crown Courts everyday involve relatively small sums and it is essential to provide clear guidance for courts dealing with such cases.

The Council has chosen to focus more on the role that the offender has played and the impact the crime has on the victim than the SGC guideline does. In setting the sentence levels the Council has generally placed greater emphasis on the culpability of the offender than the financial harm caused.

Section two: Developing the guideline

Research

The Council commissioned NatCen Social Research to undertake research on online fraud.⁶ In particular the research explored the ways that online fraud is being committed, its impact on victims, and attitudes to concepts relating to sentencing fraud offences. The research looked specifically at two fraud offences – confidence fraud and possessing, making or supplying articles for use in frauds – and comprised three phases: an evidence review; in-depth interviews with organisations involved in addressing fraud; and focus groups and interviews with victims of online fraud.

The research found that victims had suffered financial, emotional and psychological impacts as the result of fraud. Some victims reported that fraud had damaged relationships with others and could cause considerable inconvenience for them. The wider impact on society of online fraud was highlighted; professional organisations thought that the damage to public confidence in using legitimate online business could have a far-reaching impact on the UK economy.

The findings from this research informed the development of the guidelines and particularly the proposal that emphasis is placed on the impact these offences have on victims when assessing harm at step one.

Assessing seriousness

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

The particular circumstances of each offence covered by the draft guideline which reaches court will be different. The draft guideline aims to help the court to decide how serious an offence is and what the sentence should be.

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

⁶ Kerr, J., Owen, R., McNaughton Nicholls, C. and Button, M. (2013) *Research on Sentencing Online Fraud Offences*, Sentencing Council Research Series 01/13, London: Sentencing Council, <http://sentencingcouncil.judiciary.gov.uk/facts/research-and-analysis-publications.htm>

STEP ONE**Determining the offence category**

The first step that the court will take is to consider the principal factors of the offence. The draft guideline directs the court to consider the factors relating to the **culpability** of the offender in committing the offence and the **harm** that has been caused. Culpability relates to the role the offender has played and the sophistication with which the offence was carried out. Some offences may have characteristics which fall into different categories. In these cases culpability is to be assessed by balancing the characteristics and reaching an assessment of the offender's overall culpability.

In the case of these types of offences, harm is, broadly speaking, assessed in terms of the financial value involved in the offence and the effect on the victim but there are variations to the approach within each guideline. Each draft guideline lists the principal factors relevant to the offence, in relation to harm and culpability. These are the factors that the Council considers are the most important in deciding the seriousness of the offence. The offence category reflects the severity of the offence and sets the starting point and range of sentences within which the offender is sentenced. The list of factors at step one is exhaustive (except in the draft corporate guideline).

STEP TWO**Starting point and category range**

Once the court has determined the offence category the next step is to decide upon a provisional sentence using the relevant starting point and category range. The court must then consider any relevant aggravating and mitigating factors and the weight that they are to be given. The factors at step two are non-exhaustive.

The ranges and starting points in the draft guidelines have been proposed based on statistical data collected by the Ministry of Justice where the way in which the data is collected allows sentence levels to be separated by offence. The ranges and starting points have then been tested against case law and in research interviews conducted with the judiciary. For some offences the data is of limited assistance in determining sentence ranges and starting points due to the way offences are categorised. For example, a variety of different types of fraudulent activity may be charged under section 1 Fraud Act 2006. In these instances the ranges and starting points have been proposed on the basis of a combination of the current guidelines (where applicable), reported cases, press reports and details of other cases provided by the Crown Prosecution Service.

Once the court has determined the starting point and taken into account relevant aggravating and mitigating factors there are six further steps to follow. The steps listed below apply to all the draft guidelines for individual offenders. The steps that are to be followed when sentencing corporate offenders are at page 65.

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.⁷

STEP FIVE**Totality principle**

Where an offender is before the court for more than one offence, the court must consider whether the sentences passed should be consecutive or concurrent. The court must also consider whether the total sentence is just and proportionate to the overall offending behaviour. Further guidance on the totality principle can be found in the Sentencing Council guideline *Offences taken into consideration and totality: definitive guideline*.⁸

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.

⁷ http://sentencingcouncil.judiciary.gov.uk/docs/Reduction_in_Sentence_for_a_Guilty_Plea_-Revised_2007.pdf

⁸ http://sentencingcouncil.judiciary.gov.uk/docs/Definitive_guideline_TiCs__totality_Final_web.pdf

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 passed.

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

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

Section three: Fraud

(Draft guideline at page 83)

This section considers fraudulent acts that have been charged under section 1 Fraud Act, section 17 Theft Act, conspiracy to defraud or a statutory conspiracy to commit such an offence. This proposed guideline is the only one included within the consultation that is not defined by a particular type of fraudulent activity, for example benefit or revenue fraud. Under the SGC guidelines, confidence fraud and banking and insurance fraud and obtaining credit through fraud were two distinct guidelines. Confidence fraud carried higher starting points and sentence ranges than the guideline for banking and insurance fraud and obtaining credit through fraud. The Council has considered the features of both these types of offending and concluded that a guideline that encompasses both of the previous SGC groupings is logical and that sentence levels should be the same. Analysis of current sentencing practice indicates that sentence levels for this type of offending are broadly similar and that sentences for banking and insurance fraud and obtaining credit through fraud have been upheld by the Court of Appeal at levels higher than those indicated in the SGC guideline.

The culpability and harm factors are identical for both offences but as they carry different statutory maximum terms (section 1 Fraud Act 2006 has a maximum of 10 years' imprisonment; section 17 Theft Act 1968 has a maximum of 7 years' imprisonment) there are separate sentencing ranges and starting points at step two.

Q1

Do you agree that a single fraud guideline is appropriate for cases of confidence fraud and banking and insurance fraud?

STEP ONE

Determining the offence category

The court considers the main factual elements of the case to determine the offence category. In the draft guideline the role of the offender and the level of planning and sophistication of the offence form the basis of the culpability factors.

There are three levels of culpability: high, medium and lesser. Consideration was given to adopting the descriptions of culpability used in the *Drugs Definitive Guideline* (leading, significant and lesser) but this was discounted as the factors are not directly comparable; for example there is a much higher incidence of offences involving one person only in fraud cases. In this guideline consideration

is given to the level of planning involved in the offence and the sophistication of the activity as well as to the offender’s role which is the sole basis of the culpability assessment in the *Drugs Definitive Guideline*. The offence may feature characteristics in different levels of culpability; in such cases the court is directed to balance the characteristics to reach a fair assessment of the offender’s culpability.

The culpability factors will enable a court to assess the relative roles of offenders when sentencing conspiracy to commit section 1 fraud or conspiracy to defraud.

Culpability factors

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.

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:

- 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:

- 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
- Not motivated by personal gain
- Peripheral role in organised fraud
- Opportunistic ‘one-off’ offence; very little or no planning
- Limited awareness or understanding of fraudulent activity

Category A – High culpability

There are seven factors that demonstrate the highest level of culpability, whether that is due to the offender's status and influence in a group offence or as a single offender. The offence may also have been sophisticated and have entailed detailed planning. Offences where many victims have been affected or vulnerable victims have been targeted may also place the offender into this category.

Category B – Medium culpability

There are two factors in this category, 'a significant role where offending is part of a group activity.' This factor is relevant to offenders who are not acting alone, but who are not taking a leading role. The second, 'all other cases where characteristics for categories A or C are not present', is intended to be used where, when the offending has been considered in the round, the culpability is neither at the highest or lowest level or where the offending bears none of the characteristics in high or lesser culpability.

Category C – Lesser culpability

Five factors are listed that indicate lesser culpability. It is envisaged that typically those offenders who have been unwitting about the extent of the fraudulent activity, have played a peripheral role or who have been coerced into committing the offence will fall within this category.

Q2

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

Q3

Are there culpability factors included that should be considered at step two rather than step one? If so, which factors?

Harm factors

Once the court has determined the culpability category, the next step is to consider the harm caused by the offence. The Council considers that the financial loss caused or intended to be caused should form the basis of the assessment of harm but that the additional factor of victim impact should be included at step one, rather than as a step two aggravating factor. The financial values are used as the primary harm factor, as in this type of offending it is invariably financial gain rather than the effect the fraud has on the victim that motivates the offender. This approach ensures consistency in terms of how financial amounts are considered in determining harm but also allows the judge or magistrate to increase the overall harm category proportionally to reflect the level of victim impact. The Council is strongly of the view that victim impact should be an integral component of the harm assessment as the financial loss alone does not fully reflect the harm this type of offending causes. The same sum may represent quite different harm depending on who the victim is.

The harm assessment comprises two stages. Firstly, the court is to put the offence into one of the categories in the 'Harm A' table. The categories are split into five ranges of financial values that are based on either the loss caused or intended to be caused by the offence. The court is then directed to take account of the level of harm caused to the victim and/or others in the 'Harm B' table. The 'victim' refers to the individual who suffers or would suffer the loss or, where corporations are the target of the fraud, the impact the crime has upon them. 'Others' refers to those directly affected by the defendant's criminal activity for example, relatives of an elderly, vulnerable or deceased victim. The victim impact is divided into three categories; the highest level of impact may lead to the offence

being moved up a category; medium impact may move the offence upwards within the identified category range; low impact offences will remain within the category.

Q4 Is the proposed two stage approach to harm assessment the correct way to assess the harm caused by fraud?

Harm is initially assessed by the actual, intended or risked loss that results 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.

Risked loss involves consideration of both the likelihood of harm occurring and the extent of it if it does. Risked loss is less serious than actual or intended loss. Where the offence has caused risked 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.

Where the value greatly exceeds the starting point in category 1, it will normally be appropriate to move outside the identified category range.

Harm A – Loss caused or intended		
Category 1	£500,000 or more	Starting point based on £1 million
Category 2	£100,000 – £500,000 or Risk of category 1 harm	Starting point based on £300,000
Category 3	£20,000 – £100,000 or Risk of category 2 harm	Starting point based on £50,000
Category 4	£5,000 – £20,000 or Risk of category 3 harm	Starting point based on £12,500
Category 5	Less than £5,000 or Risk of category 4 harm	Starting point based on £2,500
Risk of category 5 harm, move down the range within the category		

Magistrates’ courts routinely deal with cases involving much smaller amounts than the lowest starting point of £10,000 in the current SGC guidelines for confidence fraud. The lowest starting point in the draft guideline is based on £2,500 which is intended to provide greater assistance to sentencers dealing with offences at the lower end of the scale of financial loss. Guidance is also included advising courts sentencing cases that involve values that greatly exceed the starting point in the highest category of £1 million that it will normally be appropriate to move outside the category range.

The assessment of harm is based on actual or intended loss to the victim. Intended loss relates to offences where circumstances prevent the actual loss that is intended by the offender committing the fraudulent activity. For example, where a financial institution intervenes to stop a payment

being made, the fact the offender is prevented from obtaining the amount they intended does not necessarily reduce the level of harm for the purposes of sentencing.

The Council considered offences where no loss was ever intended but where there was risked loss. An example is where income is inflated on a mortgage application in order to secure a higher value loan. The offender has every intention of meeting the repayments and believes they can do so once a bonus is received but when the expected bonus is not forthcoming and the repayments cannot be made the fraud is exposed. In this example there may be little or no actual loss as the mortgage company is able to repossess the property. The Council concluded that risked loss is less serious than the same actual or intended loss. The guideline therefore directs the court to move these offences into the next lower category of harm.

Q5

Do you agree with the approach to actual and intended loss and risked loss?

Q6

Are the financial amounts in the five categories set at appropriate levels?

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. In banking and insurance frauds the victim impact should be considered in relation to the corporation that suffers or would suffer the loss (e.g. the insurance company, building society) and any individual (or their relatives if the victim is deceased) whose identity has been used.

Harm B – Victim impact demonstrated by one or more of the following:

High impact – move up a category; if in category 1 move up the range

Serious detrimental effect on the victim or others whether financial or otherwise, e.g. substantial damage to credit rating

Victim particularly vulnerable (due to factors including but not limited to their age, financial circumstances, mental capacity)

Medium impact – move upwards within the category range

Considerable detrimental effect on the victim or others whether financial or otherwise

Use of another's identity, whether deceased or living

Damage to victim's confidence in managing financial affairs (e.g. victim no longer willing to use online banking/shopping)

Lesser impact – remain in category defined by loss

Some detrimental impact on victim or others, whether financial or otherwise

The existing SGC guideline for confidence fraud does not refer to the harm caused to victims. It does treat offences where vulnerable victim(s) have been targeted as more serious but the impact the offence has had is not taken into account until the court considers aggravating factors at step two. The SGC banking and insurance guideline makes no reference to the impact the offence may have on either an individual who has had their account or identity compromised or on the corporation that has suffered the loss.

The Council considers harm being assessed solely on the basis of financial amounts with the impact on the victim being considered at step two as too narrow an approach that does not fully reflect the serious harm that this type of offending can cause. The research commissioned by the Council found that:

‘A wide range of emotional and psychological impacts were reported including panic, anger, fear, stress, anxiety, self-blame and shame. Self-blame was one of the most pervasive effects of fraud which could damage participants’ opinion of themselves as capable people who could protect themselves from harm. There were participants that reported feeling vulnerable, lonely, violated and depressed and in the most extreme cases suicidal as a result of fraud.’⁹

Victim impact is categorised at three levels: high impact, medium impact and lesser impact.

High impact

There are two factors that demonstrate the highest level of impact:

- serious detrimental effect on the victim or others whether financial or otherwise, e.g. substantial damage to credit rating
- victim particularly vulnerable (due to factors including but not limited to their age, financial circumstances, mental capacity)

This category is applicable where the victim (whether an individual or a corporation) has suffered the most serious level of harm. In a case where the victim is elderly, vulnerable or deceased, impact may additionally be assessed by considering the effect of the offending on ‘others’, such as the close family of the victim. The harm may be assessed in terms of the amount lost relative to their financial situation or the effect a breach of trust has had upon them; these are simply illustrations, there may be other effects that can be properly considered as seriously detrimental to the victim or others. Where a victim is particularly vulnerable the court may also treat this as the most serious level of harm.

If the offence has caused a high impact to the victim or others, the court is directed to give consideration as to whether it warrants the sentence being moved up to the corresponding starting point in the next category. If the offence already falls into the highest category due to the financial harm caused, the court is to consider whether to move the sentence further up the range.

Medium impact

Three factors are listed that may demonstrate medium impact:

- considerable detrimental effect on the victim or others whether financial or otherwise;
- use of another’s identity, whether deceased or living
- damage to victim’s confidence in managing financial affairs (e.g. victim no longer willing to use online banking/shopping)

⁹ Kerr, J., Owen, R., McNaughton Nicholls, C. and Button, M. (2013) *Research on Sentencing Online Fraud Offences*, Sentencing Council Research Series 01/13, London: Sentencing Council, <http://sentencingcouncil.judiciary.gov.uk/facts/research-and-analysis-publications.htm>

The first factor refers to the same manifestations of harm to the victim or others as set out in the high impact category but at a less serious level. The second reflects the lasting harm that can be caused as the result of identity theft. The final factor is relevant to individual victims. It demonstrates how the use of technology, in particular managing finances using ATMs and online banking, is now commonplace and the effect that being defrauded when using these facilities can have.

If the court considers that the offence has caused a medium impact to the victim or others, it may be appropriate to move the sentence upwards within the category range that was determined using the Harm A table.

Lesser impact

There is one factor in this category:

- some detrimental impact on victim or others, whether financial or otherwise

This category may be appropriate where there has been harm caused to the victim or others but it is not to the extent that would warrant the offence being placed in the two higher categories.

Where the harm is assessed as lesser impact the overall harm category remains as defined in the Harm A assessment.

Q7

Do you agree with the approach to the assessment of victim impact (Harm B)?

Q8

Are the factors in the three categories the right ones?

STEP TWO

Starting points and category ranges

Once the court has determined the culpability and harm categories at step one, the next step is to identify the starting point. The court should then consider any additional factors, not identified at step one, which may aggravate or mitigate the offence.

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

Factors increasing seriousness

Statutory aggravating factors:

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

Offence committed whilst on bail

Other aggravating factors:

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

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

The following factors are standard aggravating factors that have been included in other definitive guidelines:

- 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’ is included to reflect the difficulty prosecutors face in gathering cross-border evidence and how, in some cases, the offence being committed across borders is a deliberate feature of the offence in an attempt to evade detection and prosecution.

‘Blame wrongly placed on others’ is intended to provide for situations where the offender has attempted to thwart an investigation by deliberately blaming an innocent party and the harm that may be caused to the wrongly accused.

Q9 Do you agree with the proposed aggravating factors? If not, please specify which you would add or remove and why.

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

Remorse, particularly where evidenced by voluntary reparation to the victim

Good character and/or exemplary conduct

Lack of sophistication with 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

Early active co-operation particularly in complex cases

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

Activity originally legitimate

There are no statutory mitigating factors. The first three factors listed above ('no previous convictions **or** no relevant/recent convictions'; 'remorse, particularly where evidenced by voluntary reparation to the victim'; good character and/or exemplary conduct') are not subject to consultation. These factors are commonplace within guidelines. Sentencers are experienced in applying these criteria and attaching the appropriate weight (if any) to them in the circumstances of the offence.

'Lack of sophistication with little or no prospect of success' has been included to reflect offences where, while the offender fully intended to commit the offence and the harm assessment at step one reflects the intention, the way in which the offence was planned means it was unlikely to succeed.

'Serious medical condition requiring urgent, intensive or long-term treatment' is a factor that may be considered when the court is weighing up whether to suspend a custodial sentence or the suitability of a community order or the length of sentence.

'Age and/or lack of maturity where it affects the responsibility of the offender' is a standard factor included in Sentencing Council guidelines that is intended to deal with offences committed by those who are only just over the age of 18 or who are over 18 but immature in comparison to their peers. This may also be applicable when sentencing elderly offenders.

'Lapse of time since apprehension where this does not arise from the conduct of the offender' has been included as a factor that may be particularly relevant in fraud cases where a lengthy investigation has taken place or there have been procedural delays and the offender has therefore had the weight of the case hanging over him for a protracted period. If any delay is the result of the offender's conduct no mitigation will be appropriate.

The offender having a 'mental disorder or learning disability' may be cause for mitigation if it has affected their understanding of the severity of their actions.

The court will want to consider in cases where the offender is the 'sole or primary carer for dependent relatives' the impact of any sentence, but particularly a custodial term, on dependants.

'Early active co-operation particularly in complex cases' has been included to reflect the benefit to the prosecution, victims and the courts of an offender actively co-operating from the outset. This factor is not to be used simply where a guilty plea has been entered and care should be taken that it does not lead to 'double counting' but where an offender has appreciably reduced the burden on the prosecution, victims and courts by co-operating it may well be that some mitigation can be given.

'Determination and/or demonstration of steps having been taken to address offending behaviour' is a standard factor included in Sentencing Council guidelines to reflect circumstances where the offender has not only taken responsibility for his behaviour but has also shown commitment to addressing it.

'Activity originally legitimate' is included as a mitigating factor to provide for circumstances where the offence was not planned as fraudulent from the outset. The weight to be attached to this factor would depend on the circumstances of each case. Where legitimate activity is used to create trust which is then exploited, no mitigation would be appropriate.

Q10

Does the inclusion of 'early active co-operation particularly in complex cases' present a risk that the offender may be given double credit for a guilty plea? Is there another formulation that would better reflect the intended application of this factor?

Q11

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

Sentence levels

The starting points and ranges have been developed based initially on the ranges for these offences in the SGC confidence fraud guideline. The SGC banking and insurance and obtaining credit through fraud guideline has sentence ranges at lower levels than those in the confidence fraud and was not used as a basis for development of this guideline. It is not possible to copy across the exact ranges in the SGC confidence fraud model as the approach taken to assessing the nature of the offence and the value is not compatible with the approach taken to assessment of harm and culpability in this draft guideline. Current sentencing practice has been used to test the proposed sentence levels within this consultation.

TABLE 1
Section 1 Fraud Act 2006
Conspiracy to defraud (common law)
 Maximum: 10 years' custody

Harm	Culpability		
	A	B	C
Category 1 £500,000 or more Starting point based on £1 million	Starting point 7 years' custody	Starting point 4 years' custody	Starting point 2 years 6 months' custody
	Category range 5 – 8 years' custody	Category range 3 – 6 years' custody	Category range 18 months' – 4 years' custody
Category 2 £100,000 – £500,000 Starting point based on £300,000	Starting point 5 years' custody	Starting point 2 years 6 months' custody	Starting point 1 year's custody
	Category range 3 – 6 years' custody	Category range 18 months' – 4 years' custody	Category range 26 weeks' – 2 years' custody
Category 3 £20,000 – £100,000 Starting point based on £50,000	Starting point 2 years 6 months' custody	Starting point 1 year's custody	Starting point High level community order
	Category range 18 months' – 4 years' custody	Category range 26 weeks' – 2 years' custody	Category range Low level community order – 36 weeks' custody
Category 4 £5,000 – £20,000 Starting point based on £12,500	Starting point 1 year's custody	Starting point High level community order	Starting point Medium level community order
	Category range 26 weeks' – 2 years' custody	Category range Medium level community order – 1 year's custody	Category range Low level community order – High level community order
Category 5 Less than £5,000 Starting point based on £2,500	Starting point 26 weeks' custody	Starting point Medium level community order	Starting point Band B fine
	Category range High level community order – 1 year's custody	Category range Band B fine – High level community order	Category range Band A fine – Low level community order

TABLE 2
Section 17 Theft Act 1968: False accounting
 Maximum: 7 years' custody

Harm	Culpability		
	A	B	C
Category 1 £500,000 or more Starting point based on £1 million	Starting point 5 years' custody	Starting point 3 years 6 months' custody	Starting point 2 years' custody
	Category range 4 years' – 6 years 6 months' custody	Category range 2 years 6 months' – 5 years' custody	Category range 15 months' – 3 years 6 months' custody
Category 2 £100,000 – £500,000 Starting point based on £300,000	Starting point 4 years' custody	Starting point 2 years' custody	Starting point 36 weeks' custody
	Category range 2 years 6 months' – 5 years' custody	Category range 15 months' – 3 years 6 months' custody	Category range High level community order – 21 months'
Category 3 £20,000 – £100,000 Starting point based on £50,000	Starting point 2 years' custody	Starting point 36 weeks' custody	Starting point Medium level community order
	Category range 15 months' – 3 years 6 months' custody	Category range High level community order – 21 months' custody	Category range Low level community order – 36 weeks' custody
Category 4 £5,000 – £20,000 Starting point based on £12,500	Starting point 36 weeks' custody	Starting point Medium level community order	Starting point Low level community order
	Category range 26 weeks' – 21 months' custody	Category range Low level community order – 36 weeks' custody	Category range Band C fine – Medium level community order
Category 5 Less than £5,000 Starting point based on £2,500	Starting point High level community order	Starting point Low level community order	Starting point Band B fine
	Category range Medium level community order – 36 weeks' custody	Category range Band B fine – Medium level community order	Category range Band A fine – Low level community order

The following scenarios have been included to provide illustrations of cases where the guideline would be applicable and the resulting sentence ranges.

Scenario A – Section 1 Fraud Act 2006

F approached Mrs V (aged 85 and frail) and offered to clear her gutters for £75, which he did. He told her that there were problems with her roof which he could repair for £2,000. He convinced her that the roof needed to be repaired urgently and she used nearly all her savings to pay him. A surveyor valued the work on the roof at less than £100. F was convicted at trial. Mrs V's confidence was severely affected and she was unable to continue to live independently.

F had targeted a vulnerable victim which would put him into culpability A with harm of £2,000 which falls into category 5 but would be moved up to category 4 to take account of the victim impact. The likely sentence would therefore be in the range of 26 weeks' to 2 years' custody.

Scenario B – Section 1 Fraud Act 2006

G obtained a mortgage of £250,000 to buy a house by grossly inflating his income and falsifying a letter from his employer. He had intended to keep up the repayments but was unable to do so. The house was repossessed and the actual loss to the lender was under £5,000.

These facts suggest culpability B with a risk of category 2 harm which would place it in category 3. The likely sentence (before any reduction for a guilty plea) would therefore be in the range of 26 weeks' to 2 years' custody.

Q12

Please give your views on the proposed sentence levels for these offences.

Q13

Do you consider that the mechanism to move to the next category up in scenario A leads to a proportionate sentence?

Q14

Under the existing SGC guidelines the likely sentence range for scenario A (single fraudulent transaction confidence fraud involving targeting of a vulnerable victim, loss less than £20,000) would be medium community order to 26 weeks' custody. Do you consider the proposed sentence range is appropriate?

Q15

In scenario B, the risked loss moves the offence down a harm category. Does this lead to a proportionate sentence?

Section four: Possessing, making or supplying articles for use in frauds

(Draft guideline at page 91)

This section is applicable to offences charged under section 6 Fraud Act 2006 or section 7 Fraud Act 2006. Offenders may be charged with these offences in addition to section 1 Fraud Act 2006 where they have committed a substantive fraud. This guideline does **not** apply to such cases; it is to be used only where the offender is not also being sentenced for a substantive fraud. In order to be guilty of these offences the offender's actions must be intended to lead to a fraud. Examples of the nature of this offending include the production of computer programs to send 'spam' email purporting to be from a financial institution; creation or possession of machines that are attached to ATMs to copy card details; creation or possession of lists of individuals' banking or credit card details.

The culpability and harm factors are identical for both these offences but as they carry different statutory maximum terms (section 6 Fraud Act 2006 has a maximum term of 5 years' custody; section 7 Fraud Act 2006 has a maximum term of 10 years' custody) there are separate sentencing ranges at step two.

STEP ONE

Determining the offence category

In the draft guideline the role of the offender and the level of planning and sophistication of the offence form the basis of the culpability factors. There are three levels of culpability: high, medium and lesser. The offence may feature characteristics in different levels of culpability; in such cases the court is directed to balance the characteristics to reach a fair assessment of the offender's culpability.

Culpability factors

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.

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:
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:
A significant role where offending is part of a group activity
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
Not motivated by personal gain
Opportunistic ‘one-off’ offence; very little or no planning
Limited awareness or understanding of fraudulent activity

With the exception of references to targeting vulnerable victims and the number of victims in the highest level of culpability, the factors proposed are identical to those in the fraud model. Discussion of the three levels of culpability is at page 16.

Q16 Do you agree with the proposed approach to the assessment of culpability?

Q17 Are there culpability factors included that should be considered at step two rather than step one? If so, which factors?

Harm factors

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.

Harm

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

Lesser harm

All other offences

The SGC guideline does not include any assessment of harm for these offences. The lack of a substantive fraud makes it very difficult to identify the harm caused by these offences as there is an intended rather than an actual victim. In addition it will not always be possible for prosecutors to assess the potential loss from these acts so it is proposed that for these offences the two stage approach adopted in the fraud model is not used.

The proposed model uses two levels of harm, greater and lesser, based on the harm that the articles could cause should they be successfully deployed. The factors that indicate 'greater harm' relate to the potential financial loss (described as significant rather than in values) informed by factors such as the number of articles or the potential of the articles to affect a large number of victims and by the impact the articles may have due to the use of third party identities.

Lesser harm does not contain any factors as it is to be used where none of the factors indicating greater harm are present.

Q18 Do you agree to the approach to the assessment of harm?

Q19 Are the factors in greater harm the right ones?

STEP TWO**Starting points and category ranges**

Once the court has determined the culpability and harm categories at step one, the next step is to identify the starting point. The court should then consider any additional factors, not identified at step one, which may aggravate or mitigate the offence.

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

Factors increasing seriousness**Statutory aggravating factors:**

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

Offence committed whilst on bail

Other aggravating factors:

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

The aggravating factors are identical to those proposed in the fraud guideline. A discussion of these is at page 21.

Factors reducing seriousness or reflecting personal mitigation
No previous convictions or no relevant/recent convictions
Remorse
Good character and/or exemplary conduct
Lack of sophistication with 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
Early active co-operation particularly in complex cases
Determination and/or demonstration of steps having been taken to address offending behaviour
Activity originally legitimate

The mitigating factors are identical to those proposed in the fraud guideline. A discussion of these is at page 22.

Q20

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

Sentence levels

The starting points and ranges have been developed based initially on the ranges for these offences in the SGC guideline. It is not possible to copy across the exact ranges in the SGC model as the approach taken to assessing the nature of the offence and the value is not compatible with the approach taken to assessment of harm and culpability in this guideline. Current sentencing practice has been used to test the proposed sentence levels within this consultation; however, the volume of sentences passed for these offences is relatively low as shown in the tables below:

Section 7 Fraud Act 2006 – Make/supply articles for use in frauds

2011	Magistrates' court	Crown Court	Total
Number of sentences passed	102	12	114

Section 6 Fraud Act 2006 – Possess/control article for use in frauds

2011	Magistrates' court	Crown Court	Total
Number of sentences passed	274	297	571

TABLE 1
Section 6 Fraud Act 2006: Possessing articles for use in frauds
 Maximum: 5 years' custody

Harm	Culpability		
	A	B	C
Greater	Starting point 18 months' custody	Starting point 36 weeks' custody	Starting point High level community order
	Category range 36 weeks' custody – 3 years' custody	Category range High level community order – 2 years' custody	Category range Medium level community order – 26 weeks' custody
Lesser	Starting point 26 weeks' custody	Starting point Medium level community order	Starting point Band B fine
	Category range High level community order – 18 months' custody	Category range Low level community order – 26 weeks' custody	Category range Band A fine – Medium level community order

TABLE 2
Section 7 Fraud Act 2006: Making or adapting or supplying articles for use in frauds
 Maximum: 10 years' custody

Harm	Culpability		
	A	B	C
Greater	Starting point 4 years 6 months' custody	Starting point 2 years 6 months' custody	Starting point 1 year's custody
	Category range 3 – 7 years' custody	Category range 18 months' – 5 years' custody	Category range High level community order – 3 years' custody
Lesser	Starting point 2 years' custody	Starting point 36 weeks' custody	Starting point Medium level community order
	Category range 26 weeks' – 4 years' custody	Category range Low level community order – 2 years' custody	Category range Band C fine – 26 weeks' custody

The following scenarios have been included to provide illustrations of cases where the guideline would be applicable and the resulting sentence ranges.

Scenario C – Section 6 Fraud Act 2006

D placed a device in a cash machine. A member of the public attempted to use the machine but her card was retained by the device. D returned to the machine, removed the device and was arrested. He was in possession of the card and the device which contained a false card slot and a stripped down mobile phone that had been used to video record the customer putting in her PIN number. It was accepted that D was not the organiser of the attempted fraud. His conduct would be likely to fall into culpability B and greater harm which has a starting point of 36 week's custody and a range of high level community order to two years' custody before any reduction for a guilty plea.

Scenario D – Section 7 Fraud Act 2006

E, a Chinese student, made forged certificates in Chinese for fellow students which purported to show that they had obtained degrees from British universities and purported to be verified by the Chinese Embassy. He was paid £2,000 for each document and had received a total of £180,000. This conduct would place him in culpability A and greater harm which has a starting point of four and a half years' custody with a range of three to seven years before any reduction for a guilty plea.

Q21

Please give your views on the proposed sentence levels for these offences.

Section five: Revenue fraud

(Draft guideline at page 97)

The following offences are included within this guideline:

- cheat the revenue (common law)
- conspiracy to defraud (common law)
- section 1 Fraud Act 2006
- 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 106A 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

STEP ONE

Determining the offence category

The court considers the main factual elements of the case to determine the offence category.

Culpability factors

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.

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:

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:

A significant role where offending is part of a group activity

Other cases where characteristics for categories A or C are not present

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 fraudulent activity

There are three levels of culpability: high, medium and lesser. The offence may feature characteristics in different levels of culpability; in such cases the court is directed to balance the characteristics to reach a fair assessment of the offender’s culpability. The culpability factors are identical to those in the fraud guideline with the exception of the deletion of the two factors that relate to victims and the addition of ‘fraudulent activity conducted over sustained period of time’ within the highest level of culpability. This has been included as a step one factor to reflect the seriousness of defrauding the public purse and the deliberate intention to do so over time. A discussion of the remainder of the culpability factors can be found at page 16.

Q22 Do you agree with the approach to the assessment of culpability?

Q23 Are there culpability factors included that should be considered at step two rather than step one? If so, which factors?

Harm factors

Harm – Amount/relief obtained or intended to be obtained

Where the value greatly exceeds the starting point in category 1, it will normally be appropriate to move outside the identified category range.

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

The assessment of harm is based on the amount/relief obtained or intended to be obtained from Her Majesty's Revenue and Customs. There are seven categories of harm ranging in value from less than £20,000 to the highest category of £50 million or more. This wide range of values reflects the range of revenue fraud offending and is intended to give sufficient guidance at both ends of the spectrum.

As the victim is the state there is no assessment of victim impact in this model as the harm caused in this regard will not be a variable. The sentence levels proposed in this guideline reflect the serious harm caused to society by this type of offending.

Q24

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

Q25

Are the financial ranges set at the appropriate levels?

STEP TWO**Starting points and category ranges**

There are three separate tables containing sentence ranges and starting points within this guideline. This is intended to deal with the different maxima for the offences as listed below:

Offences with a maximum term of 7 years' imprisonment

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 106A 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

Offences with a maximum term of 10 years' imprisonment

Section 1 Fraud Act 2006

Conspiracy to defraud (common law)

Offences with an unlimited maximum term of imprisonment

Cheat the revenue (common law)

Once the court has determined the culpability and harm categories at step one, the next step is to identify the starting point. The court should then consider any additional factors, not identified at step one, which may aggravate or mitigate the offence.

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

Table 1 provides sentence ranges for offences involving up to £2 million. If an offence is charged under section 1 Fraud Act 2006 which involves a higher amount, the court is referred to Table 3. Similarly if a case is to be sentenced under cheat the revenue (Table 3) where the amount is less than £2 million the court is referred to the sentence ranges within Table 1 which caters for smaller amounts.

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

Length of time over which the offence was committed

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

Damage to third party (e.g. as a result of identity theft)

Dealing with goods with an additional health risk

Disposing of goods to under age purchasers

The proposed aggravating factors are the same as those proposed for the fraud guideline at page 21 but with five additional factors.

‘Length of time over which the offence was committed’ and ‘involves multiple frauds’ are included to reflect offences that persist for a long time and those that involve many fraudulent acts on the part of the offender are to be treated more seriously.

‘Damage to third party (e.g. as a result of identity theft)’ is included to reflect the harm caused by using a third party’s identity to commit revenue fraud.

‘Dealing with goods with an additional health risk’ and ‘disposing of goods to under age purchasers’ are both taken from the SGC guideline. Examples include the illicit manufacture of alcohol on which no duty is paid or the sale of cigarettes to children on which duty has not been paid.

Factors reducing seriousness or reflecting personal mitigation

No previous convictions or no relevant/recent convictions
Remorse, particularly where evidenced by voluntary repayment
Good character and/or exemplary conduct
Lack of sophistication with 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
Early active co-operation particularly in complex cases
Determination and/or demonstration of steps having been taken to address offending behaviour
Activity originally legitimate

The mitigating factors are identical to those proposed in the fraud guideline. A discussion of these is at page 22.

Q26 Do you agree with the proposed aggravating and mitigating factors? If not, please specify which you would add or remove and why.

Sentence levels

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
Category 4 £500,000–£2 million Starting point based on £1 million	Starting point 6 years' custody	Starting point 4 years' custody	Starting point 2 years' custody
	Category range 5 – 8 years' custody	Category range 3 – 6 years' custody	Category range 18 months' – 3 years 6 months' custody
Category 5 £100,000 – £500,000 Starting point based on £300,000	Starting point 5 years' custody	Starting point 3 years' custody	Starting point 18 months' custody
	Category range 3 – 6 years' custody	Category range 2 – 4 years' custody	Category range 26 weeks' – 2 years' custody
Category 6 £20,000 – £100,000 Starting point based on £50,000	Starting point 3 years' custody	Starting point 18 months' custody	Starting point 26 weeks' custody
	Category range 2 – 4 years' custody	Category range 36 weeks' – 2 years' custody	Category range Medium level community order – 1 year's custody
Category 7 Less than £20,000 Starting point based on £12,500	Starting point 2 years' custody	Starting point 1 year's custody	Starting point Medium level community order
	Category range 36 weeks' – 2 years 6 months' custody	Category range High level community order – 18 months' custody	Category range 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 144 Finance Act 2000: 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
Category 4 £500,000–£2 million Starting point based on £1 million	Starting point 5 years' custody	Starting point 3 years 6 months' custody	Starting point 21 months' custody
	Category range 4 years' – 6 years 6 months' custody	Category range 2 years 6 months' – 5 years' custody	Category range 15 months' – 3 years' custody
Category 5 £100,000 – £500,000 Starting point based on £300,000	Starting point 4 years' custody	Starting point 2 years 6 months' custody	Starting point 15 months' custody
	Category range 2 years 6 months' – 5 years' custody	Category range 21 months' – 3 years 6 months' custody	Category range High level community order – 21 months' custody
Category 6 £20,000 – £100,000 Starting point based on £50,000	Starting point 2 years 6 months' custody	Starting point 15 months' custody	Starting point High level community order
	Category range 21 months' – 3 years 6 months' custody	Category range 26 weeks' – 21 months' custody	Category range Low level community order – 36 weeks' custody
Category 7 Less than £20,000 Starting point based on £12,500	Starting point 18 months' custody	Starting point 36 weeks' custody	Starting point Low level community order
	Category range 26 weeks' – 2 years' custody	Category range Medium level community order – 15 months' custody	Category range Band C fine – High level community order

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.

Harm	Culpability		
	A	B	C
Category 1 £50 million or more Starting point based on £80 million	Starting point 12 years' custody	Starting point 8 years' custody	Starting point 5 years' custody
	Category range 10 – 17 years' custody	Category range 7 – 12 years' custody	Category range 4 – 8 years' custody
Category 2 £10 million – £50 million Starting point based on £30 million	Starting point 10 years' custody	Starting point 7 years' custody	Starting point 4 years' custody
	Category range 8 – 13 years' custody	Category range 5 – 9 years' custody	Category range 3 – 6 years' custody
Category 3 £2 million – £10 million Starting point based on £5 million	Starting point 8 years' custody	Starting point 5 years' custody	Starting point 3 years' custody
	Category range 6 – 9 years' custody	Category range 3 years 6 months' – 7 years' custody	Category range 2 – 4 years' custody

The scenario below has been included to provide an illustration of a case where the guideline would be applicable and the resulting sentence ranges.

Scenario E – Conspiring to cheat the revenue and section 72 Customs and Excise Management Act 1979

X was the main organiser of a large scale VAT fraud which defrauded the revenue of £60 million over a period of four years. Y also paid a leading role. Z was employed by Y and completed VAT returns which he knew to be inaccurate. X and Y were convicted of conspiring to cheat the public revenue. Z was convicted of four counts of fraudulent evasion of VAT amounting to £1.5 million. X and Y would fall into culpability A, harm category 1 and would receive sentences in the range of 10 to 17 years (Table 3). Z would fall into culpability B, harm category 4 and would receive a sentence in the range of two and a half to five years' custody (Table 2).

Q27

In scenario E three offenders are sentenced. Is the draft revenue fraud guideline workable for offences charged as conspiracies? Are the sentences in scenario E proportionate in relation to the roles of the offenders?

Q28

Please give your views on the proposed sentence levels for these offences.

Section six: Benefit fraud

(Draft guideline at page 105)

Benefit fraud can be charged under a number of offences. The guideline is applicable to offences charged under the following:

- section 17 Theft Act 1968: False accounting
- section 111A Social Security Administration Act 1992: Dishonest representations for obtaining benefit etc
- section 112 Social Security Administration Act 1992: False representations for obtaining benefit etc
- section 35 Tax Credits Act 2002: Tax credit fraud

Offences charged as conspiracy to defraud or fraud under section 1 Fraud Act 2006 should normally be sentenced with reference to the revenue fraud guideline.

STEP ONE

Determining the offence category

The court considers the main factual elements of the case to determine the offence category.

Culpability factors

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.

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:**

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:

A significant role where offending is part of a group activity

Other cases where characteristics for categories A or C are not present

C – Lesser culpability:

Involved through coercion, intimidation or exploitation

Not motivated by personal gain

Performed limited function under direction

In the draft guideline the role of the offender and the level of planning and sophistication of the offence form the basis of the culpability factors. There are three levels of culpability: high, medium and lesser. The offence may feature characteristics in different levels of culpability; in such cases the court is directed to balance the characteristics to reach a fair assessment of the offender's culpability. The factors are identical to those proposed in the fraud guideline other than the deletion of the factors that relate to the number of victims and targeting vulnerable victims. A discussion of the culpability factors can be found at page 16.

Q29

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

Q30

Are there culpability factors included that should be considered at step two rather than step one? If so, which factors?

Harm factors

Harm – Amount obtained or intended to be obtained		
Where the amount exceeds category 1, refer to the corresponding category in Table 2 of the revenue fraud guideline.		
Category 1	£50,000 or more, but less than £100,000	Starting point based on £75,000
Category 2	£10,000 or more, but less than £50,000	Starting point based on £30,000
Category 3	£2,500 or more, but less than £10,000	Starting point based on £5,000
Category 4	Less than £2,500	Starting point based on £1,000

The assessment of harm is based on the amount obtained or intended to be obtained. There are four categories of financial ranges that are much lower in value than in other guidelines within this consultation to reflect the amounts that are commonly defrauded in this type of offending. Unless professionally planned, it is unlikely that many benefit frauds will exceed the amount in category 1. If a case is to be sentenced where the amount does exceed category 1 the court is referred to the sentence ranges within the revenue guideline which caters for larger amounts. Similarly, if section 1 Fraud Act 2006 is charged the court is to refer to the sentence ranges for this offence within the revenue guideline. As in other guidelines, the financial values are based on the amount that the offender either successfully obtained or intended to obtain where the attempt was unsuccessful.

Q31 Do you agree with the approach to the assessment of harm?

Q32 Are the financial ranges set at the appropriate levels?

STEP TWO Starting points and category ranges

Once the court has determined the culpability and harm categories at step one, the next step is to identify the starting point. The court should then consider any additional factors, not identified at step one, which may aggravate or mitigate the offence.

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

There are two separate tables containing sentence ranges and starting points within this guideline. This is intended to deal with the different maxima for the offences as listed below:

Offences with a maximum term of 7 years' imprisonment

Section 17 Theft Act 1968: False accounting

Section 111A Social Security Administration Act 1992: Dishonest representations for obtaining benefit etc

Section 35 Tax Credits Act 2002: Tax credit fraud

Offences with a maximum term of 3 months' imprisonment

Section 112 Social Security Administration Act 1992: False representations for obtaining benefit etc

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

Length of time over which the offence 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 (e.g. as a result of identity theft)

The aggravating factors proposed are largely the same as those in the fraud model which are discussed at page 21 with the exception of the additions detailed below.

'Length of time over which the offence was committed' and 'number of false declarations' are included to reflect that any change in circumstances must be reported immediately. Where the offender has made numerous false declarations or has failed to update their circumstances over a long period of time or in circumstances where the offender has never been entitled to the payments, the court may wish to increase the sentence.

'Involves multiple frauds' may be relevant where an offender has submitted several claims.

Q33

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

Factors reducing seriousness or reflecting personal mitigation

No previous convictions or no relevant/recent convictions
Remorse, particularly where evidenced by voluntary repayment
Good character and/or exemplary conduct
Serious medical condition requiring urgent, intensive or long-term treatment
Legitimate entitlement to other benefits
Lack of sophistication with little or no prospect of success
Claim originally legitimate but ceases to be so
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
Early active co-operation particularly in complex cases
Determination and/or demonstration of steps having been taken to address offending behaviour
Content of original application accurate [not applicable to section 112 offences]
Offender experiencing significant financial hardship or pressure at time fraud was committed due to exceptional circumstances.

The mitigating factors are largely based on those proposed in the fraud model discussed at page 22 with four additional factors. ‘Legitimate entitlement to other benefits’ is included to reflect cases where an offender would have been entitled to some payment if an appropriate claim had been made. ‘Claim originally legitimate but ceases to be so’ and ‘content of original application accurate’ are included to reflect where the circumstances of the claimant have changed rather than offences where the offender has falsified an application from the outset.

‘Offender experiencing significant financial hardship or pressure at time fraud was committed due to **exceptional** circumstances’ is intended to cater for rare cases where the circumstances of the offender can be considered as some mitigation for fraudulently claiming. An example may be a bereaved parent who collects payment that they are not entitled to but does so because they have accrued debts from being unable to work due to the bereavement or due to funeral costs. The Council considers there may be exceptional circumstances such as this where some mitigation would be appropriate.

Q34 Do you agree with the proposed mitigating factors? If not, please specify which you would add or remove and why.

Q35 Please provide your views on the inclusion of ‘offender experiencing significant financial hardship or pressure at time fraud was committed due to exceptional circumstances’ as a mitigating factor.

Sentence levels

Current sentencing practice has been used to test the proposed sentence levels within this consultation.

TABLE 1

Section 17 Theft Act 1968: False accounting

Section 111A Social Security Administration Act 1992: Dishonest representations to obtain benefit etc

Section 35 Tax Credits Act 2002: Tax credit fraud

Maximum: 7 years' custody

For offences where the value of the fraud is over £100,000, or where the offending has been charged under section 1 Fraud Act 2006 or the common law offence of conspiracy to defraud, refer to the corresponding table in the guideline on revenue fraud.

Harm	Culpability		
	A	B	C
Category 1 £50,000 – £100,000 Starting point based on £75,000	Starting point 3 years' custody	Starting point 18 months' custody	Starting point 26 weeks' custody
	Category range 2 – 4 years' custody	Category range 36 weeks' – 30 months' custody	Category range High level community order – 1 year's custody
Category 2 £10,000 – £50,000 Starting point based on £30,000	Starting point 18 months' custody	Starting point 36 weeks' custody	Starting point High level community order
	Category range 1 year's – 2 years 6 months' custody	Category range High level community order – 18 months' custody	Category range Low level community order – 26 weeks' custody
Category 3 £2,500 – £10,000 Starting point based on £5,000	Starting point 36 weeks' custody	Starting point High level community order	Starting point Medium level community order
	Category range High level community order – 18 months' custody	Category range Low level community order – 26 weeks' custody	Category range Band B fine – High level community order
Category 4 Less than £2,500 Starting point based on £1,000	Starting point High level community order	Starting point Low level community order	Starting point Band B fine
	Category range Low level community order – 26 weeks' custody	Category range Band B fine – Medium level community order	Category range Band A fine – Band C fine

TABLE 2

Section 112 Social Security Administration Act 1992: False representations for obtaining benefit etc

Triable summarily only

Maximum: Level 5 fine and/or 3 months' custody

Harm	Culpability		
	A	B	C
Category 3 Above £2,500 Starting point based on £5,000	Starting point High level community order	Starting point Medium level community order	Starting point Low level community order
	Category range Medium level community order – 12 weeks' custody	Category range Band B fine – High level community order	Category range Band A fine – Medium level community order
Category 4 Less than £2,500 Starting point based on £1,000	Starting point Medium level community order	Starting point Band B fine	Starting point Band A fine
	Category range Low level community order – High level community order	Category range Band A fine – Band C fine	Category range Discharge – Band B fine

The following scenarios have been included to provide illustrations of cases where the guideline would be applicable and the resulting sentence ranges.

Scenario F – Section 111A Social Security Administration Act 1992

S was legitimately claiming state benefits for herself and her two children. She then received an inheritance of £150,000 but continued to claim benefits despite knowing that savings in excess of £16,000 disqualified her from claiming. She spent money on clothes, holidays and gifts and treats for her children. She claimed £30,000 to which she was not entitled over two years.

Scenario G – Section 111A Social Security Administration Act 1992

T was legitimately claiming state benefits for herself and her two children. She then took a part time job but failed to declare her change of circumstances and continued to receive benefits. She did not have a lavish lifestyle and was paying back rent arrears which dated from a time when her abusive ex-partner lived with her. She claimed £30,000 to which she was not entitled over two years, but could have legitimately claimed £20,000 in other benefits if she had notified the change.

Both cases would fall into culpability B, harm category 2 which has a range of high level community order to 18 months' custody. The amount obtained would put them both at around the suggested starting point of 36 weeks' custody before any adjustment for aggravating and mitigating factors and reduction for a guilty plea.

Q36 Would adjustment for aggravating and mitigating factors in the above scenarios lead to proportionate sentences?

Q37 Is the guidance for sentencing benefit fraud cases involving amounts in excess of £100,000 sufficiently clear?

Q38 Please give your views on the proposed sentence levels for these offences.

Section seven: Money laundering

(Draft guideline at page 111)

There is currently no guideline for any money laundering offences. The offences under the Proceeds of Crime Act 2002 that the draft guideline applies to are:

- section 327: Concealing/disguising/convertting/transferring/removing criminal property from England and Wales;
- section 328: Entering into arrangements concerning criminal property; and
- section 329: Acquisition, use and possession of criminal property

The offences all carry a statutory maximum term of 14 years' imprisonment.

Money is 'laundered' to allow criminals to spend proceeds of crime. Without this process, many criminal activities would be less fruitful; this is particularly the case in relation to the supply of drugs. The circumstances of money laundering cases are wide ranging; case law states that the origin of the money and the extent to which the laundering has facilitated the underlying offence must be given proper regard in determining the sentence level.

STEP ONE

Determining the offence category

The court considers the main factual elements of the case to determine the offence category.

Culpability factors

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.

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:**

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:

A significant role where offending is part of a group activity

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

Not motivated by personal gain

Opportunistic 'one-off' offence; very little or no planning

Limited awareness or understanding of criminal activity

The role of the offender and the level of planning and sophistication of the offence are key factors in determining culpability as high, medium or lesser. The offence may feature characteristics in different categories; in such cases the court is directed to balance the characteristics to reach a fair assessment of the offender's culpability.

With the exception of the deletion of references to targeting vulnerable victims and the number of victims in the highest level of culpability the remaining factors proposed are identical to those in the fraud model. Discussion of the three levels of culpability is at page 16.

Q39

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

Q40

Are there culpability factors included that should be considered at step two rather than step one? If so, which factors?

Harm factors

The assessment of harm follows a similar format to that proposed in the fraud guideline. The first stage of the assessment is to determine which of the six levels of financial values the offence falls in. A review of case law has shown that the amounts of money involved in these offences are wide ranging which is reflected in the proposed categories.

Harm is initially assessed by the value of the money laundered. Where the value greatly exceeds the starting point in category 1, it will normally be appropriate to move outside the identified range.

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

The court is then directed to take account of the harm associated with the underlying offence where it is known. The Council considers the origin of the money to be a fundamental consideration in determining the seriousness of the offence. If the court determines that the money laundered is the proceeds of serious criminality and is therefore a case involving ‘greater harm’ then it may warrant the sentence being moved up to the corresponding point in the next higher category or to the top of the range in the initial category.

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 the sentence being moved up to the corresponding point in the next higher category or to the top of the range in the initial category. Where it is possible to identify the underlying offence regard should be given to the relevant sentencing levels for that offence.

Greater harm demonstrated by:

- money laundered is proceeds from serious criminality including but not limited to drug offences, terrorism, robbery, tax evasion.

Move up a category; if in category 1 move up the range.

Q41 Is the proposed two stage approach to harm assessment the correct way to assess the harm caused by money laundering?

STEP TWO**Starting points and category ranges**

Once the court has determined the culpability and harm categories at step one, the next step is to identify the starting point. The court should then consider any additional factors, not identified at step one, which may aggravate or mitigate the offence.

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

Factors increasing seriousness**Statutory aggravating factors:**

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

Offence committed whilst on bail

Other aggravating factors:

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

Damage to third party e.g. loss of employment to legitimate employees

The proposed aggravating factors are the same as those proposed for the fraud guideline at page 21, but with the additional factor of 'damage to third party e.g. loss of employment to legitimate employees'. This factor has been included to cater for instances where a business with legitimate employees who are not involved with criminal activity has been used to launder money and consequently ceases to trade.

Factors reducing seriousness or reflecting personal mitigation
No previous convictions or no relevant/recent convictions
Remorse
Lack of sophistication with little or no prospect of success
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
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
Early active co-operation particularly in complex cases
Determination and/or demonstration of steps having been taken to address offending behaviour
Activity originally legitimate

The mitigating factors are identical to those proposed in the fraud guideline. A discussion of these is at page 22.

Sentence levels

Harm	Culpability		
	A	B	C
Category 1 £10 million or more Starting point based on £30 million	Starting point 10 years' custody	Starting point 7 years' custody	Starting point 4 years' custody
	Category range 8 – 13 years' custody	Category range 5 – 10 years' custody	Category range 3 – 6 years' custody
Category 2 £2 million – £10 million Starting point based on £5 million	Starting point 8 years' custody	Starting point 5 years' custody	Starting point 3 years' custody
	Category range 6 – 9 years' custody	Category range 3 years 6 months' – 7 years' custody	Category range 2 – 4 years' custody
Category 3 £500,000 – £2 million Starting point based on £1 million	Starting point 7 years' custody	Starting point 4 years' custody	Starting point 2 years' custody
	Category range 5 – 8 years' custody	Category range 3 – 6 years' custody	Category range 18 months' – 4 years' custody
Category 4 £100,000 – £500,000 Starting point based on £300,000	Starting point 5 years' custody	Starting point 2 years 6 months' custody	Starting point 1 year's custody
	Category range 3 – 6 years' custody	Category range 18 months' – 4 years' custody	Category range 26 weeks' – 2 years' custody
Category 5 £10,000 – £100,000 Starting point based on £50,000	Starting point 2 years 6 months' custody	Starting point 1 year's custody	Starting point High level community order
	Category range 18 months' – 4 years' custody	Category range 26 weeks' – 2 years' custody	Category range Low level community order – 36 weeks' custody
Category 6 Less than £10,000 Starting point based on £5,000	Starting point 1 year's custody	Starting point High level community order	Starting point Low level community order
	Category range 26 weeks' – 2 years' custody	Category range Low level community order – 1 year's custody	Category range Band B fine – Medium level community order

The following scenarios have been included to provide illustrations of cases where the guideline would be applicable and the resulting sentence ranges.

Scenario H

J ran a travel agency and bureau de change. Over a period of two years he allowed £1.2 million of drugs money to be laundered through his business. He retained about £70,000 of that money as commission. K worked for J and was responsible for banking the money which he suspected was not legitimate. K received no reward aside from his salary. They were convicted after a trial.

J's conduct would place him in culpability A, harm category 3 with a range of five to eight years' custody. The amount laundered would place him at around the starting point of seven years, but the source of the money could justify raising the sentence towards the top of the range.

K's conduct would place him in culpability C, harm category 3 with a range of 18 months to three years' custody.

Q42

In scenario H two offenders are sentenced. Are their sentences proportionate in relation to their roles?

Q43

Please give your views on the proposed sentence levels for these offences.

Section eight: Bribery

(Draft guideline at page 117)

This section considers offences that have been charged under the Bribery Act 2010:

- section 1: Bribing another person;
- section 2: Being bribed; and
- section 6: Bribing foreign officials.

The proposed guideline follows the basic structure used in the fraud and money laundering guidelines but differs in that no financial amounts are used to define harm. This is due to the perceived difficulty in quantifying the financial value of the harm in the different situations that might lead to prosecution under the Bribery Act 2010.

There is no current sentencing guideline for these offences. At the time of writing there have been only three prosecutions under this relatively new Act and whilst the Council has had regard to sentences for bribery and corruption prosecuted under section 1 of the Prevention of Corruption Act 1906 (now repealed), the sentencing data is limited. It should be noted that the maximum sentence available under previous legislation was seven years as compared with ten years for Bribery Act offences. The Council has taken the view that sentences for bribery offences should be broadly equivalent to those for fraud prosecuted under section 1 of the Fraud Act 2010 which also carries a ten year maximum sentence.

STEP ONE

Determining the offence category

The court considers the main factual elements of the case to determine the offence category. As with the draft fraud and money laundering guidelines, in the draft bribery guideline the role of the offender and the level of planning and sophistication of the offence are key factors in determining culpability as high, medium or lesser. Additionally, the status of the person being bribed can also indicate a high level of culpability. The offence may feature characteristics in different categories; in such cases the court is directed to balance the characteristics to reach a fair assessment of the offender's culpability.

Culpability factors

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.

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:

- 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:

- 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
- Not motivated by personal gain
- Peripheral role in organised activity
- Opportunistic ‘one-off’ offence; very little or no planning
- Limited awareness or understanding of corrupt activity

Category A – High culpability

There are eight factors that demonstrate the highest level of culpability. These factors are designed to cover an offender who plays a leading role in a group offence; an offender who abuses a position of responsibility (for example a police officer or civil servant who accepts a bribe); an offender who offers a bribe to such a person; an offender who plans a sophisticated or long running offence and an offender who seeks significant gain from the offending. The intention is that these factors reflect the most serious level of offending and that offences contrary to section 6 Bribery Act 2010 (bribery of foreign public officials) would almost always fall into category A.

Category B – Medium culpability and category C – Lesser culpability

The factors in these categories are identical to those in the draft fraud guideline; they are discussed at page 16.

Q44 Do the factors outlined above clearly reflect the levels of culpability involved in this type of offending? Please say what you would change and why.

Harm factors

Once the court has determined the culpability category, the next step is to consider the harm caused by the offence. As noted above, in bribery cases it will often be difficult to put a financial figure on the harm caused. In the draft guideline 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.

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.

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.

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 factors

Category 3

Limited detrimental impact on individuals, the environment, government, business or public services

Risk of category 2 factors

Category 4

Risk of category 3 factors

The harm factors are identified in broad terms to take account of the wide range of harmful effects that may result from bribery offences.

Direct financial harm caused by bribery offences may include the inflated cost of a contract to a company whose employee is in receipt of bribes; or the loss of a contract for a bona fide competitor. Examples of indirect harm resulting from bribery offences may include inflated costs of contracts leading to increased prices for taxpayers or consumers; inferior or substandard goods or services being provided representing poor value for money and also potentially risks to health, the environment or the proper functioning of government or business; and an undermining of trust in

government or public services (including law enforcement). Harm can also be assessed by reference to the financial gain achieved (or intended to be achieved) from the offending.

As with the draft fraud guideline, the bribery guideline takes account of the possibility that offending may result in the risk of harm without the actual harm materialising. The guideline treats the risk of harm as being less serious than the same actual harm, but allows the sentencer the flexibility to treat a very high risk of harm as seriously as actual harm.

Q45 Do you agree with the approach to assessing harm as outlined above? Are the harm factors identified sufficiently clear whilst providing courts with the flexibility to reflect the widely different types of harm that could result from this type of offending? Please say what you would change and why.

STEP TWO

Starting points and category ranges

Once the court has determined the culpability and harm categories at step one, the next step is to identify the starting point. The court should then consider any additional factors, not identified at step one, which may aggravate or mitigate the offence.

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

Factors increasing seriousness**Statutory aggravating factors:**

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

Offence committed whilst on bail

Other aggravating factors:

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

The aggravating factors in the draft bribery guideline include those discussed in the fraud guideline at page 21. The Council has identified two additional aggravating features that may be relevant to bribery offences:

‘Pressure exerted on another party’ is included to provide for the situation where an offender in a position of influence puts pressure on another (for example an employee or sub-contractor) to make corrupt payments.

‘Offence committed to facilitate other criminal activity’ is included to reflect the additional culpability and harm involved where a bribe is made or offered to induce another to commit an offence or in an attempt to cover up an offence. An example might be bribing a customs official not to search a lorry, in order to facilitate the smuggling of drugs.

Factors reducing seriousness or reflecting personal mitigation

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

Remorse, particularly where evidenced by voluntary reparation to victims

Good character and/or exemplary conduct

Lack of sophistication with 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

Early active co-operation particularly in complex cases

The mitigating factors are taken from the draft fraud guideline which is discussed at page 22.

Q46 Do you agree with the aggravating and mitigating factors for bribery proposed at step two? If not, please specify what you would change and why.

Sentence levels

Due to the lack of prosecutions and therefore the lack of established sentencing practice for these offences the sentence levels proposed are set at similar levels to those within the draft fraud guideline which carries the same maximum term.

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.

The court should then consider further adjustment within the category range for aggravating or mitigating features.

Consecutive sentences for multiple offences may be appropriate where large sums are involved.

Harm	Culpability		
	A	B	C
Category 1	Starting point 7 years' custody	Starting point 4 years' custody	Starting point 2 years' custody
	Category range 5 – 8 years' custody	Category range 3 – 6 years' custody	Category range 18 months' – 4 years' custody
Category 2	Starting point 5 years' custody	Starting point 2 years 6 months' custody	Starting point 1 year's custody
	Category range 3 – 6 years' custody	Category range 18 months' – 4 years' custody	Category range 26 weeks' – 2 years' custody
Category 3	Starting point 2 years 6 months' custody	Starting point 1 year's custody	Starting point High level community order
	Category range 18 months' – 4 years' custody	Category range 26 weeks' – 2 years' custody	Category range Low level community order – 36 weeks' custody
Category 4	Starting point 1 year's custody	Starting point High level community order	Starting point Low level community order
	Category range 26 weeks' – 2 years' custody	Category range Low level community order – 1 year's custody	Category range Band C fine – Medium level community order

The following scenario has been included to provide an illustration of a case where the guideline would be applicable and the resulting sentence range.

Scenario J – Section 6 Bribery Act 2010

M was the head of the UK division of an IT company. Over a two year period M oversaw the making of corrupt payments totalling £1.5 million to a government official with control over two state owned institutions in a third world country, to secure business worth £25 million. M's bonus was increased as a result by £500,000. The corrupt activities inflated the price of the contract by around £5 million and although the IT systems supplied did work, they were not appropriate for the needs of the institutions.

These facts involve significant planning over a sustained period of time and the corruption of foreign officials causing a substantial gain to the offender and loss to others which would place M in culpability A and harm category 1. The likely sentence would be in the range of five to eight years before any reduction for a guilty plea.

Q47

Please give your views on the proposed sentencing levels for Bribery Act offences. Please specify what you would change and why.

Section nine: Corporate offenders

(Draft guideline at page 123)

This section considers offences committed by organisations. There is currently no guideline for sentencing organisations convicted of financial crimes. The draft guideline covers fraud, money laundering and bribery offences committed by companies or other bodies. The only punishment available for an organisation convicted of these offences is a fine. There have been very few criminal prosecutions of organisations for the offences covered by this guideline and consequently no established sentencing practice for organisations. In the guideline the term ‘corporation’ is used to describe the offender; the term covers any organisation or body including partnerships and charities but it does not cover individuals.

In considering the approach to the guideline for corporate offenders the Council took into account existing practice including the following:

- regulatory and civil penalty regimes used by bodies such as the Financial Services Authority (now the Financial Conduct Authority (FCA)), the Office of Fair Trading, Her Majesty’s Revenue and Customs and the Serious Fraud Office;
- relevant domestic criminal case law;
- civil and criminal penalties imposed in other jurisdictions (notably the United States);
- fine regimes for corporations in the definitive guideline for corporate manslaughter and the draft environmental guideline;
- sentencing guideline for corporations produced by the United States Sentencing Commission.

The Council has sought to achieve a balance between the desirability of providing a level of certainty for prosecutors and defendants as to a likely sentence and the need for flexibility. Flexibility is important in this guideline as the offender could vary in size from a small organisation with very limited resources to a huge multi-national corporation with vast resources, and the offences covered by the guideline encompass a wide range of behaviour.

STEP ONE Compensation

The first stage in determining the penalty to be imposed is for the court to consider whether it wishes to make a compensation order. It may not always be appropriate to make a compensation order, but where it is, it is important to prioritise the payment of compensation over the payment of a fine where the means of the offender are limited. Whether or not the court decides to make a compensation order, it should then go on to step two.

Q48

Do you agree that consideration of compensation should be at step one? If not, please give your reasons.

STEP TWO

Determining the offence category

The court is to consider the main factual elements of the case to determine the offence category.

Culpability factors

The culpability factors in the draft corporate guideline reflect those used in the draft guidelines for sentencing individuals. Key factors in determining culpability as high, medium or lesser include the role of the offending corporation and the level of planning and sophistication of the offence. Also included in medium and lesser culpability are factors relating to offences contrary to section 7 Bribery Act 2010 (failure of commercial organisations to prevent bribery) which is an offence which cannot be committed by an individual. The offence may feature characteristics in different categories; in such cases the court is directed to balance the characteristics to reach a fair assessment of the offender's 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)

Involving others through pressure or coercion (e.g. 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 offence only)

In contrast to the draft guidelines for individuals, the culpability factors in the draft corporate guidelines are not exhaustive. This is because the guideline has been devised without the benefit of a body of case law on which to base culpability factors and the Council recognises that cases could come before the courts with features that are not contemplated by the draft guideline.

Q49 Do you agree with the culpability factors proposed for these offences and do you agree that the list of factors should be non-exhaustive? If not, please specify what you would change and why.

Harm factors

In the draft guideline harm is represented by a financial figure, which is the amount the corporate offender gained (or intended to gain) from the offence. The Council recognises that the method used to assess that figure may have to vary depending on the circumstances of each case. The draft guideline therefore sets out suggested (but not prescriptive) methods of arriving at the harm figure for the different types of offending covered by the guideline.

Harm

Harm is represented by a financial figure assessed as the actual **gross** amount obtained (or loss avoided) or intended to be obtained (or avoided) by the offender as a result of the offence.

**Amount obtained or intended to be obtained
(or loss avoided or intended to be avoided)**

Fraud

For offences of fraud, conspiracy to defraud, cheating the revenue and fraudulent evasion of duty or VAT, it will usually be possible to quantify the actual or intended gross gain to the offender.

Bribery

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.

Money laundering

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.

General

Where the actual or intended gain cannot be established, the appropriate measure will be the amount that was likely to be achieved in all the circumstances. In the absence of evidence of the amount that was likely to be obtained, 10% of the relevant revenue (i.e. 10% 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.

The assessment of harm is a matter for the sentencing court taking into account all the circumstances of the case. In the absence of clear evidence of actual or intended amounts obtained from the offending, the guideline suggests that the court may use 10% of the relevant revenue (i.e. 10% of the worldwide revenue derived from the product or business area to which the offence relates for the period of the offending) as an appropriate measure of harm. This guidance is designed to provide the sentencing court with an alternative method of arriving at a harm figure and to encourage offenders to co-operate in providing the court with the information it needs to arrive at an appropriate measure of harm. The suggested use of 10% of relevant revenue is taken from the penalty regime used by the FCA¹⁰ where it represents a medium level financial penalty.

Q50 Do you agree with the approach to assessing harm as outlined above? Does the approach strike the right balance between flexibility and certainty? Please say what you would change and why.

STEP THREE

Starting points and category ranges

Harm	Culpability		
	A	B	C
Harm figure multiplier	Starting point 300%	Starting point 200%	Starting point 100%
	Category range 250% to 400%	Category range 100% to 300%	Category range 20% to 150%

Once the court has determined the culpability level and harm figure at step two, the next step is to identify the starting point by applying a multiplier derived from the culpability level to the harm figure. For example, where a corporation's culpability level is assessed as medium and the harm figure assessed as £1 million the starting point would be £2 million (with a range of £1 million to £3 million).

The highest multiplier is 400% (i.e. four times the harm figure) and the lowest is 20% (i.e. one fifth of the harm figure). The use of a multiplier applied to a harm figure is broadly based on the US system of determining fines for corporations where the range of multipliers is .05 to 4.¹¹

¹⁰ <http://fshandbook.info/FS/html/FCA/DEPP/6/5A>

¹¹ http://www.uscc.gov/Guidelines/Organizational_Guidelines/guidelines_chapter_8.htm

Q51 Do you agree with the approach to calculating the financial penalty by applying a multiplier to the harm figure? Do you think that the multipliers are set at the right level? Please say what you would change and why.

Once the starting point has been identified, the court then considers any additional factors, not identified at step two, which may aggravate or mitigate the offence. The presence of any of these factors (the list identifies common factors but is non-exhaustive) may lead the court to decide the sentence should be adjusted upwards or downwards from the starting point within the category range.

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

Factors increasing seriousness
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 (e.g. 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

The proposed aggravating factors are based on those used in the draft guidelines for individuals, which are discussed at page 21. The Council has also identified additional aggravating features that may be relevant to corporate offenders; additionally several factors have been included at this stage which are taken into account in the assessment of harm in the guidelines for individuals.

‘Corporation or subsidiary set up to commit fraudulent activity’ could apply where a corporation sets up a subsidiary in an attempt to distance itself from unlawful activity.

‘Fraudulent activity endemic within corporation’ – the extent of unlawful conduct within a corporation and the culture of the corporation could be relevant aggravating factors.

‘Substantial harm (whether financial or otherwise) suffered by victims of offending or by third parties affected by offending’ is included as an aggravating factor because (unlike the draft guidelines for individual offenders) the effect on victims is not an integral part of the assessment of harm in step two of this guideline.

‘Risk of harm greater than actual or intended harm (e.g. in banking/ credit fraud)’ allows the sentencer to take into account risk which is not included in the assessment of harm in this guideline.

‘Substantial harm caused to integrity or confidence of markets’ and ‘substantial harm caused to integrity of local or national governments’ are included as aggravating factors as these are not taken into account in the assessment of harm.

‘Serious nature of underlying criminal activity (money laundering offences)’ – this is a factor which can increase the level of harm in the draft money laundering guideline to reflect the fact that money laundering is an integral component of much serious criminality.

Factors reducing seriousness or reflecting personal 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)

Early active co-operation particularly in complex cases

Little or no actual gain to corporation from offending

The proposed mitigating factors reflect those proposed in the draft guidelines for individual offenders which are discussed at page 22.

‘No actual loss to victims’ is included as a mitigating factor because victim impact is not an integral part of the assessment of harm.

‘Offending committed under previous directors/managers’ is included to reflect that the offending may have been committed under the auspices of people who are no longer associated with the corporation and may be coupled with the mitigation of voluntary reporting of the offending.

‘Little or no actual gain to corporation from offending’ is included to mitigate against the possibility that the assessment of harm at step two could result in a figure much greater than any actual gain.

Q52

Do you agree with the aggravating and mitigating factors for corporate offenders proposed at step three? If not, please specify what you would change and why.

STEP FOUR
Adjustment of fine

The Council intends that the guideline should provide the sentencer with sufficient flexibility to ensure that the sentence fulfils the stated objectives of punishment, deterrence and the removal of gain, in a fair and proportionate way. Up until this point there has been no consideration of the size and means of the offender in the guideline. Where the only sentence available is a fine, it is inevitable that the means or worth of the offender will have a considerable bearing on the impact of the sentence. Step four contains a list of non-exhaustive factors for the court to consider in making any adjustment to the fine (reduction or increase) to ensure that the fine is proportionate having regard to the size and financial position of the offending organisation, the seriousness of the offence and any unacceptable harm the fine would otherwise cause to third parties. This follows the approach taken in the draft environmental offences guideline.

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

The Council intends that any 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 would have the effect of putting the offender out of business will be relevant; in some bad cases this may be an acceptable consequence.

Q53 Please give your views on the proposed step four. Do you think that it achieves the objectives of punishment, deterrence and removal of gain in a fair way? Please specify what you would change and why.

Further steps in the process of deciding the sentence

Having arrived at a provisional sentence through the four steps described above, the court will then consider the following additional steps:

STEP FIVE

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 SIX

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.¹²

STEP SEVEN

Ancillary Orders

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

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.

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.

¹² http://sentencingcouncil.judiciary.gov.uk/docs/Reduction_in_Sentence_for_a_Guilty_Plea_-Revised_2007.pdf

Q54

Do you think that any further guidance should be offered at steps five to nine? Are there any particular ancillary orders that are relevant to corporate offenders that should be mentioned at step seven?

Q55

Overall do you consider that the draft corporate guideline provides the sentencer and the parties with sufficient guidance and flexibility? Please specify what you would change and why.

Annex A:

Consultation questions

Section three: Fraud

- Q1 Do you agree that a single fraud guideline is appropriate for cases of confidence fraud and banking and insurance fraud?
- Q2 Do you agree with the proposed approach to the assessment of culpability for fraud?
- Q3 Are there culpability factors included that should be considered at step two rather than step one? If so, which factors?
- Q4 Is the proposed two stage approach to harm assessment the correct way to assess the harm caused by fraud?
- Q5 Do you agree with the approach to actual and intended loss and risked loss?
- Q6 Are the financial amounts in the five categories set at appropriate levels?
- Q7 Do you agree with the approach to the assessment of victim impact (Harm B)?
- Q8 Are the factors in the three categories (of high, medium and lesser victim impact) the right ones?
- Q9 Do you agree with the proposed aggravating factors for fraud? If not, please specify which you would add or remove and why.
- Q10 Does the inclusion of 'early active co-operation particularly in complex cases' present a risk that the offender may be given double credit for a guilty plea? Is there another formulation that would better reflect the intended application of this factor?

Q11 Do you agree with the proposed mitigating factors for fraud? If not, please specify which you would add or remove and why.

Q12 Please give your views on the proposed sentence levels for fraud offences.

Q13 Do you consider that the mechanism to move to the next category up in scenario A leads to a proportionate sentence?

Q14 Under the existing SGC guidelines the likely sentence range for scenario A (single fraudulent transaction confidence fraud involving targeting of a vulnerable victim, loss less than £20,000) would be medium community order to 26 weeks' custody. Do you consider the proposed sentence range for this scenario (of 26 weeks' to two years' custody) is appropriate?

Q15 In scenario B, the risked loss moves the offence down a harm category. Does this lead to a proportionate sentence?

Section four: Possessing, making or supplying articles for use in frauds

Q16 Do you agree with the proposed approach to the assessment of culpability for possessing, making or supplying articles for use in frauds?

Q17 Are there culpability factors included that should be considered at step two rather than step one? If so, which factors?

Q18 Do you agree with the approach to the assessment of harm?

Q19 Are the factors in greater harm the right ones?

Q20 Do you agree with the proposed aggravating and mitigating factors? If not, please specify which you would add or remove and why.

Q21 Please give your views on the proposed sentence levels for offences of possessing, making or supplying articles for use in frauds.

Section five: Revenue fraud

- Q22 Do you agree with the approach to the assessment of culpability for revenue fraud?
- Q23 Are there culpability factors included that should be considered at step two rather than step one? If so, which factors?
- Q24 Do you agree with the approach to the assessment of harm in the context of revenue fraud?
- Q25 Are the financial ranges set at the appropriate levels for revenue fraud?
- Q26 Do you agree with the proposed aggravating and mitigating factors for revenue fraud? If not, please specify which you would add or remove and why.
- Q27 In scenario E three offenders are sentenced. Is the draft revenue fraud guideline workable for offences charged as conspiracies? Are the sentences in scenario E proportionate in relation to the roles of the offenders?
- Q28 Please give your views on the proposed sentence levels for revenue fraud offences.

Section six: Benefit fraud

- Q29 Do you agree with the proposed approach to the assessment of culpability for benefit fraud?
- Q30 Are there culpability factors included that should be considered at step two rather than step one? If so, which factors?
- Q31 Do you agree with the approach to the assessment of harm in the context of benefit fraud?
- Q32 Are the financial ranges set at the appropriate levels for benefit fraud?

- Q33 Do you agree with the proposed aggravating factors for benefit fraud? If not, please specify which you would add or remove and why.
- Q34 Do you agree with the proposed mitigating factors? If not, please specify which you would add or remove and why.
- Q35 Please provide your views on the inclusion of ‘offender experiencing significant financial hardship or pressure at time fraud was committed due to exceptional circumstances’ as a mitigating factor.
- Q36 Would adjustment for aggravating and mitigating factors in scenarios F and G lead to proportionate sentences?
- Q37 Is the guidance for sentencing benefit fraud cases involving amounts in excess of £100,000 sufficiently clear?
- Q38 Please give your views on the proposed sentence levels for benefit fraud offences.

Section seven: Money laundering

- Q39 Do you agree with the proposed approach to the assessment of culpability for money laundering offences?
- Q40 Are there culpability factors included that should be considered at step two rather than step one? If so, which factors?
- Q41 Is the proposed two stage approach to harm assessment the correct way to assess the harm caused by money laundering?
- Q42 In scenario H two offenders are sentenced. Are their sentences proportionate in relation to their roles?
- Q43 Please give your views on the proposed sentence levels for money laundering offences.

Section eight: Bribery

- Q44 Do the factors outlined above clearly reflect the levels of culpability involved in offences of bribery? Please say what you would change and why.
- Q45 Do you agree with the approach to assessing harm as outlined above? Are the harm factors identified sufficiently clear whilst providing courts with the flexibility to reflect the widely different types of harm that could result from offences of bribery? Please say what you would change and why.
- Q46 Do you agree with the aggravating and mitigating factors for bribery proposed at step two? If not, please specify what you would change and why.
- Q47 Please give your views on the proposed sentencing levels for Bribery Act offences. Please specify what you would change and why.

Section nine: Corporate offenders

- Q48 Do you agree that consideration of compensation should be at step one for corporate offenders? If not, please give your reasons.
- Q49 Do you agree with the culpability factors proposed for these offences committed by corporations and do you agree that the list of factors should be non-exhaustive? If not, please specify what you would change and why.
- Q50 Do you agree with the approach to assessing harm as outlined for corporate offenders? Does the approach strike the right balance between flexibility and certainty? Please say what you would change and why.
- Q51 Do you agree with the approach to calculating the financial penalty by applying a multiplier to the harm figure? Do you think that the multipliers are set at the right level? Please say what you would change and why.
- Q52 Do you agree with the aggravating and mitigating factors for corporate offenders proposed at step three? If not, please specify what you would change and why.
- Q53 Please give your views on the proposed step four for corporate offenders. Do you think that it achieves the objectives of punishment, deterrence and removal of gain in a fair way? Please specify what you would change and why.

Q54 Do you think that any further guidance should be offered at steps five to nine? Are there any particular ancillary orders that are relevant to corporate offenders that should be mentioned at step seven?

Q55 Overall, do you consider that the draft corporate guideline provides the sentencer and the parties with sufficient guidance and flexibility? Please specify what you would change and why.

Annex B:

Background to guidelines

Sentencing Guidelines Council and Sentencing Advisory Panel

The Sentencing Council was created to bring together the functions of the two previous bodies, the Sentencing Guidelines Council (SGC) and Sentencing Advisory Panel (SAP), which were disbanded. In 2003, the SGC and the SAP had been established to work together to produce sentencing guidelines that encouraged consistency in sentencing throughout England and Wales and to support sentencers in their decision making. The SAP's role was to advise on sentencing guidelines for particular offences and other sentencing issues, and following a period of wide consultation and research if required, the Panel would produce advice for the SGC to consider. The SGC would receive advice from the SAP and use this to formulate sentencing guidelines on the subject. The SGC would publish draft guidelines for consultation and then issue final guidelines for sentencers.

The Sentencing Council is a more streamlined body with a greater remit to take forward work on sentencing not only through improvements to guidelines but also through the development of a robust evidence base and engaging more with the public to improve understanding about sentences. The Council brings together wide experience in sentencing and comprises eight judicial members and six non-judicial members.

Statutory requirements

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

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

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

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

- guidelines may be general in nature or limited to a particular offence;
- the Council must publish them as draft guidelines;
- the Council must consult the following persons about draft guidelines: the Lord Chancellor, such persons as the Lord Chancellor may direct, the Justice Select Committee of the House of Commons, such other persons as the Council considers appropriate;
- after making appropriate amendments, the Council must issue definitive guidelines;

- the Council may review the guidelines and may revise them;¹³
- the Council must publish a resource assessment in respect of the guidelines;¹⁴ and,
- the Council must monitor the operation and effect of its sentencing guidelines.¹⁵

Under the previous bodies (the SGC and SAP), courts had to ‘*have regard to any guidelines which are relevant to the offender’s case*’¹⁶ and give reasons if a sentence fell outside of the range.¹⁷ Section 125(a) of the Coroners and Justice Act 2009 states that, ‘*every court must, in sentencing an offender, follow any sentencing guideline which is relevant to the offender’s case*’. Therefore, courts are required to impose a sentence consistent with the guidelines, unless contrary to the interests of justice to do so. Therefore, the Sentencing Council is keen to ensure that the guidelines are as accessible as possible for sentencers.

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

- the sentences imposed by courts in England and Wales for offences;
- the need to promote consistency in sentencing;
- the impact of sentencing decisions on victims of offences;
- the need to promote public confidence in the criminal justice system;
- the cost of different sentences and their relative effectiveness in preventing re-offending; and,
- the results of monitoring the operation and effect of its sentencing guidelines.¹⁸

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

- the resources required for the provision of prison places;
- the resources required for probation provision; and
- the resources required for the provision of youth justice services.¹⁹

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

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

13 s. 120 Coroners and Justice Act 2009

14 s. 127(2) *ibid*

15 s. 128(1) *ibid*

16 s. 172(1) Criminal Justice Act 2003

17 s. 174(2) *ibid*

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

19 s. 127(3) Coroners and Justice Act 2009

Annex C: Draft guidelines

List of guidelines

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Corporate offenders	123

Fraud

Fraud by false representation, fraud by failing to disclose information, fraud by abuse of position

Fraud Act 2006 (section 1)

Triable either way
Maximum: 10 years' custody

Offence range: Band A fine – 8 years' custody

Conspiracy to defraud

Common law

Triable either way
Maximum: 10 years' custody

Offence range: Band A fine – 8 years' custody

False accounting

Theft Act 1968 (section 17)

Triable either way
Maximum: 7 years' custody

Offence range: Band A fine – 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.

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:**

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:

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

Not motivated by personal gain

Peripheral role in organised fraud

Opportunistic 'one-off' offence; very little or no planning

Limited awareness or understanding of fraudulent activity

Harm is initially assessed by the actual, intended or risked loss that results 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.

Risked loss involves consideration of both the likelihood of harm occurring and the extent of it if it does. Risked loss is less serious than actual or intended loss. Where the offence has caused risked 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.

Where the value greatly exceeds the starting point in category 1, it will normally be appropriate to move outside the identified category range.

Harm A – Loss caused or intended

Category 1	£500,000 or more	Starting point based on £1 million
Category 2	£100,000 – £500,000 or Risk of category 1 harm	Starting point based on £300,000
Category 3	£20,000 – £100,000 or Risk of category 2 harm	Starting point based on £50,000
Category 4	£5,000 – £20,000 or Risk of category 3 harm	Starting point based on £12,500
Category 5	Less than £5,000 or Risk of category 4 harm	Starting point based on £2,500

Risk of category 5 harm, move down the range within the category

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. In banking and insurance frauds the victim impact should be considered in relation to the corporation that suffers or would suffer the loss (e.g. the insurance company, building society) and any individual (or their relatives if the victim is deceased) whose identity has been used.

Harm B – Victim impact demonstrated by one or more of the following:

High impact – move up a category; if in category 1 move up the range

Serious detrimental effect on the victim or others whether financial or otherwise, e.g. substantial damage to credit rating

Victim particularly vulnerable (due to factors including but not limited to their age, financial circumstances, mental capacity)

Medium impact – move upwards within the category range

Considerable detrimental effect on the victim or others whether financial or otherwise

Use of another’s identity, whether deceased or living

Damage to victim’s confidence in managing financial affairs (e.g. victim no longer willing to use online banking/ shopping)

Lesser impact – remain in category defined by loss

Some detrimental impact on victim or others, whether financial or otherwise

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.

Where the value is larger or smaller than the amount on which the starting point is based, this should lead to upward or downward movement as appropriate.

The court should then consider further adjustment within the category range for aggravating or mitigating features.

Consecutive sentences for multiple offences may be appropriate where large sums are involved.

TABLE 1**Section 1 Fraud Act 2006****Conspiracy to defraud (common law)**

Maximum: 10 years' custody

Harm	Culpability		
	A	B	C
Category 1 £500,000 or more Starting point based on £1 million	Starting point 7 years' custody	Starting point 4 years' custody	Starting point 2 years 6 months' custody
	Category range 5 – 8 years' custody	Category range 3 – 6 years' custody	Category range 18 months' – 4 years' custody
Category 2 £100,000 – £500,000 Starting point based on £300,000	Starting point 5 years' custody	Starting point 2 years 6 months' custody	Starting point 1 year's custody
	Category range 3 – 6 years' custody	Category range 18 months' – 4 years' custody	Category range 26 weeks' – 2 years' custody
Category 3 £20,000 – £100,000 Starting point based on £50,000	Starting point 2 years 6 months' custody	Starting point 1 year's custody	Starting point High level community order
	Category range 18 months' – 4 years' custody	Category range 26 weeks' – 2 years' custody	Category range Low level community order – 36 weeks' custody
Category 4 £5,000 – £20,000 Starting point based on £12,500	Starting point 1 year's custody	Starting point High level community order	Starting point Medium level community order
	Category range 26 weeks' – 2 years' custody	Category range Medium level community order – 1 year's custody	Category range Low level community order – High level community order
Category 5 Less than £5,000 Starting point based on £2,500	Starting point 26 weeks' custody	Starting point Medium level community order	Starting point Band B fine
	Category range High level community order – 1 year's custody	Category range Band B fine – High level community order	Category range Band A fine – Low level community order

TABLE 2
Section 17 Theft Act 1968: False accounting
 Maximum: 7 years' custody

Harm	Culpability		
	A	B	C
Category 1 £500,000 or more Starting point based on £1 million	Starting point 5 years' custody	Starting point 3 years 6 months' custody	Starting point 2 years' custody
	Category range 4 years' – 6 years 6 months' custody	Category range 2 years 6 months' – 5 years' custody	Category range 15 months' – 3 years 6 months' custody
Category 2 £100,000 – £500,000 Starting point based on £300,000	Starting point 4 years' custody	Starting point 2 years' custody	Starting point 36 weeks' custody
	Category range 2 years 6 months' – 5 years' custody	Category range 15 months' – 3 years 6 months' custody	Category range High level community order – 21 months' custody
Category 3 £20,000 – £100,000 Starting point based on £50,000	Starting point 2 years' custody	Starting point 36 weeks' custody	Starting point Medium level community order
	Category range 15 months' – 3 years 6 months' custody	Category range High level community order – 21 months' custody	Category range Low level community order – 36 weeks' custody
Category 4 £5,000 – £20,000 Starting point based on £12,500	Starting point 36 weeks' custody	Starting point Medium level community order	Starting point Low level community order
	Category range 26 weeks' – 21 months' custody	Category range Low level community order – 36 weeks' custody	Category range Band C fine – Medium level community order
Category 5 Less than £5,000 Starting point based on £2,500	Starting point High level community order	Starting point Low level community order	Starting point Band B fine
	Category range Medium level community order – 36 weeks' custody	Category range Band B fine – Medium level community order	Category range Band A fine – Low level community order

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, particularly where evidenced by voluntary reparation to the victim

Good character and/or exemplary conduct

Lack of sophistication with 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

Early active co-operation particularly in complex cases

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

Activity originally legitimate

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.

Possessing, making or supplying articles for use in frauds

Possession of articles for use in frauds

Fraud Act 2006 (section 6)

Triable either way
Maximum: 5 years' custody

Offence range: Band A – 3 years' custody

Making or supplying articles for use in frauds

Fraud Act 2006 (section 7)

Triable either way
Maximum: 10 years' custody

Offence range: Band C – 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.

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:**

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:

A significant role where offending is part of a group activity

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

Not motivated by personal gain

Opportunistic 'one-off' offence; very little or no planning

Limited awareness or understanding of fraudulent activity

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.

Harm**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

Lesser harm

All other offences

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.

The court should then consider further adjustment within the category range for aggravating or mitigating features.

Consecutive sentences for multiple offences may be appropriate particularly where exceptionally high levels of harm may be caused.

TABLE 1
Section 6 Fraud Act 2006: Possessing articles for use in frauds

Maximum: 5 years' custody

Harm	Culpability		
	A	B	C
Greater	Starting point 18 months' custody	Starting point 36 weeks' custody	Starting point High level community order
	Category range 36 weeks' custody – 3 years' custody	Category range High level community order – 2 years' custody	Category range Medium level community order – 26 weeks' custody
Lesser	Starting point 26 weeks' custody	Starting point Medium level community order	Starting point Band B fine
	Category range High level community order – 18 months' custody	Category range Low level community order – 26 weeks' custody	Category range Band A fine – Medium level community order

TABLE 2
Section 7 Fraud Act 2006: Making or adapting or supplying articles for use in frauds

Maximum: 10 years' custody

Harm	Culpability		
	A	B	C
Greater	Starting point 4 years 6 months' custody	Starting point 2 years 6 months' custody	Starting point 1 year's custody
	Category range 3 – 7 years' custody	Category range 18 months' – 5 years' custody	Category range High level community order – 3 years' custody
Lesser	Starting point 2 years' custody	Starting point 36 weeks' custody	Starting point Medium level community order
	Category range 26 weeks' – 4 years' custody	Category range Low level community order – 2 years' custody	Category range Band C fine – 26 weeks' custody

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

Lack of sophistication with 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

Early active co-operation particularly in complex cases

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

Activity originally legitimate

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.

Revenue fraud

Fraud

Cheat the public revenue (common law)

Triable on indictment only
Maximum: Life imprisonment

Offence range: 2 –17 years' custody

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

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

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.

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:**

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:

A significant role where offending is part of a group activity

Other cases where characteristics for categories A or C are not present

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 fraudulent activity

Harm – Amount/relief obtained or intended to be obtained

Where the value greatly exceeds the starting point in category 1, it will normally be appropriate to move outside the identified category range.

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

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.

Where the value is larger or smaller than the amount on which the starting point is based, this should lead to upward or downward movement as appropriate.

The court should then consider further adjustment within the category range for aggravating or mitigating features.

Consecutive sentences for multiple offences may be appropriate where large sums are involved.

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
Category 4 £500,000–£2 million Starting point based on £1 million	Starting point 6 years' custody	Starting point 4 years' custody	Starting point 2 years' custody
	Category range 5 – 8 years' custody	Category range 3 – 6 years' custody	Category range 18 months' – 3 years 6 months' custody
Category 5 £100,000 – £500,000 Starting point based on £300,000	Starting point 5 years' custody	Starting point 3 years' custody	Starting point 18 months' custody
	Category range 3 – 6 years' custody	Category range 2 – 4 years' custody	Category range 26 weeks' – 2 years' custody
Category 6 £20,000 – £100,000 Starting point based on £50,000	Starting point 3 years' custody	Starting point 18 months' custody	Starting point 26 weeks' custody
	Category range 2 – 4 years' custody	Category range 36 weeks' – 2 years' custody	Category range Medium level community order – 1 year's custody
Category 7 Less than £20,000 Starting point based on £12,500	Starting point 2 years' custody	Starting point 1 year's custody	Starting point Medium level community order
	Category range 36 weeks' – 2 years 6 months' custody	Category range High level community order – 18 months' custody	Category range 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 144 Finance Act 2000: 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
Category 4 £500,000–£2 million Starting point based on £1 million	Starting point 5 years' custody	Starting point 3 years 6 months' custody	Starting point 21 months' custody
	Category range 4 years' – 6 years 6 months' custody	Category range 2 years 6 months' – 5 years' custody	Category range 15 months' – 3 years' custody
Category 5 £100,000 – £500,000 Starting point based on £300,000	Starting point 4 years' custody	Starting point 2 years 6 months' custody	Starting point 15 months' custody
	Category range 2 years 6 months' – 5 years' custody	Category range 21 months' – 3 years 6 months' custody	Category range High level community order – 21 months' custody
Category 6 £20,000 – £100,000 Starting point based on £50,000	Starting point 2 years 6 months' custody	Starting point 15 months' custody	Starting point High level community order
	Category range 21 months' – 3 years 6 months' custody	Category range 26 weeks' – 21 months' custody	Category range Low level community order – 36 weeks' custody
Category 7 Less than £20,000 Starting point based on £12,500	Starting point 18 months' custody	Starting point 36 weeks' custody	Starting point Low level community order
	Category range 26 weeks' – 2 years' custody	Category range Medium level community order – 15 months' custody	Category range Band C fine – High level community order

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
Category 1 £50 million or more Starting point based on £80 million	Starting point 12 years' custody	Starting point 8 years' custody	Starting point 5 years' custody
	Category range 10 – 17 years' custody	Category range 7 – 12 years' custody	Category range 4 – 8 years' custody
Category 2 £10 million – £50 million Starting point based on £30 million	Starting point 10 years' custody	Starting point 7 years' custody	Starting point 4 years' custody
	Category range 8 – 13 years' custody	Category range 5 – 9 years' custody	Category range 3 – 6 years' custody
Category 3 £2 million – £10 million Starting point based on £5 million	Starting point 8 years' custody	Starting point 5 years' custody	Starting point 3 years' custody
	Category range 6 – 9 years' custody	Category range 3 years 6 months' – 7 years' custody	Category range 2 – 4 years' custody

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

Length of time over which the offence was committed

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

Damage to third party (e.g. 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, particularly where evidenced by voluntary repayment

Good character and/or exemplary conduct

Lack of sophistication with 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

Early active co-operation particularly in complex cases

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

Activity originally legitimate

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.

Benefit fraud

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: Band A fine – 4 years' custody

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

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.

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:**

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:

A significant role where offending is part of a group activity

Other cases where characteristics for categories A or C are not present

C – Lesser culpability:

Involved through coercion, intimidation or exploitation

Not motivated by personal gain

Performed limited function under direction

Harm – Amount obtained or intended to be obtained

Where the amount exceeds category 1, refer to the corresponding category in Table 2 of the revenue fraud guideline.

Category 1	£50,000 or more, but less than £100,000	Starting point based on £75,000
Category 2	£10,000 or more, but less than £50,000	Starting point based on £30,000
Category 3	£2,500 or more, but less than £10,000	Starting point based on £5,000
Category 4	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 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.

Where the value is larger or smaller than the amount on which the starting point is based, this should lead to upward or downward movement as appropriate.

The court should then consider further adjustment within the category range for aggravating or mitigating features.

Consecutive sentences for multiple offences may be appropriate where large sums are involved.

TABLE 1
Section 17 Theft Act 1968: False accounting
Section 111A Social Security Administration Act 1992: Dishonest representations to obtain benefit etc
Section 35 Tax Credits Act 2002: Tax credit fraud
Maximum: 7 years’ custody

For offences where the value of the fraud is over £100,000, or where the offending has been charged under section 1 Fraud Act 2006 or the common law offence of conspiracy to defraud, refer to the corresponding table in the guideline on revenue fraud.

Harm	Culpability		
	A	B	C
Category 1 £50,000 – £100,000 Starting point based on £75,000	Starting point 3 years’ custody	Starting point 18 months’ custody	Starting point 26 weeks’ custody
	Category range 2 – 4 years’ custody	Category range 36 weeks’ – 30 months’ custody	Category range High level community order – 1 year’s custody
Category 2 £10,000 – £50,000 Starting point based on £30,000	Starting point 18 months’ custody	Starting point 36 weeks’ custody	Starting point High level community order
	Category range 1 year’s – 2 years 6 months’ custody	Category range High level community order – 18 months’ custody	Category range Low level community order – 26 weeks’ custody
Category 3 £2,500 – £10,000 Starting point based on £5,000	Starting point 36 weeks’ custody	Starting point High level community order	Starting point Medium level community order
	Category range High level community order – 18 months’ custody	Category range Low level community order – 26 weeks’ custody	Category range Band B fine – High level community order
Category 4 Less than £2,500 Starting point based on £1,000	Starting point High level community order	Starting point Low level community order	Starting point Band B fine
	Category range Low level community order – 26 weeks’ custody	Category range Band B fine – Medium level community order	Category range Band A fine – Band C fine

TABLE 2**Section 112 Social Security Administration Act 1992: False representations for obtaining benefit etc**

Triable summarily only.

Maximum: Level 5 fine and/or 3 months' custody

Harm	Culpability		
	A	B	C
Category 3 Above £2,500 Starting point based on £5,000	Starting point High level community order	Starting point Medium level community order	Starting point Low level community order
	Category range Medium level community order – 12 weeks' custody	Category range Band B fine – High level community order	Category range Band A fine – Medium level community order
Category 4 Less than £2,500 Starting point based on £1,000	Starting point Medium level community order	Starting point Band B fine	Starting point Band A fine
	Category range Low level community order – High level community order	Category range Band A fine – Band C fine	Category range Discharge – Band B fine

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

Length of time over which the offence 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 (e.g. as a result of identity theft)

Factors reducing seriousness or reflecting personal mitigation

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

Remorse, particularly where evidenced by voluntary repayment

Good character and/or exemplary conduct

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

Legitimate entitlement to other benefits

Lack of sophistication with little or no prospect of success

Claim originally legitimate but ceases to be so

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

Early active co-operation particularly in complex cases

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

Content of original application accurate [not applicable to section 112 offences]

Offender experiencing significant financial hardship or pressure at time fraud was committed due to **exceptional** circumstances

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.

Money laundering

Concealing/disguising/convertng/transferring/removing criminal property from England and 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 to 13 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.

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:**

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:

A significant role where offending is part of a group activity

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

Not motivated by personal gain

Opportunistic 'one-off' offence; very little or no planning

Limited awareness or understanding of criminal activity

Harm is initially assessed by the value of the money laundered. Where the value greatly exceeds the starting point in category 1, it will normally be appropriate to move outside the identified range.

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

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 the sentence being moved up to the corresponding point in the next higher category or to the top of the range in the initial category. Where it is possible to identify the underlying offence regard should be given to the relevant sentencing levels for that offence.

Greater harm demonstrated by:

- money laundered is proceeds from serious criminality including but not limited to drug offences, terrorism, robbery, tax evasion.

Move up a category; if in category 1 move up the range.

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.

Where the value is larger or smaller than the amount on which the starting point is based, this should lead to upward or downward movement as appropriate.

The court should then consider further adjustment within the category range for aggravating or mitigating features.

Consecutive sentences for multiple offences may be appropriate where large sums are involved.

Harm	Culpability		
	A	B	C
Category 1 £10 million or more Starting point based on £30 million	Starting point 10 years' custody	Starting point 7 years' custody	Starting point 4 years' custody
	Category range 8 – 13 years' custody	Category range 5 – 10 years' custody	Category range 3 – 6 years' custody
Category 2 £2 million – £10 million Starting point based on £5 million	Starting point 8 years' custody	Starting point 5 years' custody	Starting point 3 years' custody
	Category range 6 – 9 years' custody	Category range 3 years 6 months' – 7 years' custody	Category range 2 – 4 years' custody
Category 3 £500,000 – £2 million Starting point based on £1 million	Starting point 7 years' custody	Starting point 4 years' custody	Starting point 2 years' custody
	Category range 5 – 8 years' custody	Category range 3 – 6 years' custody	Category range 18 months' – 4 years' custody
Category 4 £100,000 – £500,000 Starting point based on £300,000	Starting point 5 years' custody	Starting point 2 years 6 months' custody	Starting point 1 year's custody
	Category range 3 – 6 years' custody	Category range 18 months' – 4 years' custody	Category range 26 weeks' – 2 years' custody
Category 5 £10,000 – £100,000 Starting point based on £50,000	Starting point 2 years 6 months' custody	Starting point 1 year's custody	Starting point High level community order
	Category range 18 months' – 4 years' custody	Category range 26 weeks' – 2 years' custody	Category range Low level community order – 36 weeks' custody
Category 6 Less than £10,000 Starting point based on £5,000	Starting point 1 year's custody	Starting point High level community order	Starting point Low level community order
	Category range 26 weeks' – 2 years' custody	Category range Low level community order – 1 year's custody	Category range Band B fine – Medium level community order

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

Damage to third party e.g. loss of employment to legitimate employees

Factors reducing seriousness or reflecting personal mitigation

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

Remorse

Lack of sophistication with little or no prospect of success

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

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

Early active co-operation particularly in complex cases

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

Activity originally legitimate

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.

Bribery

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: Band C fine – 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.

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:**

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

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:

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

Not motivated by personal gain

Peripheral role in organised activity

Opportunistic 'one-off' offence; very little or no planning

Limited awareness or understanding of corrupt activity

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.

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.

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 factors

Category 3

Limited detrimental impact on individuals, the environment, government, business or public services

Risk of category 2 factors

Category 4

Risk of category 3 factors

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.

The court should then consider further adjustment within the category range for aggravating or mitigating features.

Consecutive sentences for multiple offences may be appropriate where large sums are involved.

Harm	Culpability		
	A	B	C
Category 1	Starting point 7 years' custody	Starting point 4 years' custody	Starting point 2 years' custody
	Category range 5 – 8 years' custody	Category range 3 – 6 years' custody	Category range 18 months' – 4 years' custody
Category 2	Starting point 5 years' custody	Starting point 2 years 6 months' custody	Starting point 1 year's custody
	Category range 3 – 6 years' custody	Category range 18 months' – 4 years' custody	Category range 26 weeks' – 2 years' custody
Category 3	Starting point 2 years 6 months' custody	Starting point 1 year's custody	Starting point High level community order
	Category range 18 months' – 4 years' custody	Category range 26 weeks' – 2 years' custody	Category range Low level community order – 36 weeks' custody
Category 4	Starting point 1 year's custody	Starting point High level community order	Starting point Low level community order
	Category range 26 weeks' – 2 years' custody	Category range Low level community order – 1 year's custody	Category range Band C fine – Medium level community order

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, particularly where evidenced by voluntary reparation to victims

Good character and/or exemplary conduct

Lack of sophistication with 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

Early active co-operation particularly in complex cases

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.

Corporate offences: fraud, bribery and money laundering

Fraud

Conspiracy to defraud (common law)

Cheat the public revenue (common law)

Triable on indictment only

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

Confiscation

In the Crown Court 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.

The court must take account of the confiscation order before it imposes a fine. 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).

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

Determining the offence category

The court should determine the offence category with reference to **culpability** and **harm**.

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 of 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)

Involving others through pressure or coercion (e.g. 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 offence only)

Harm

Harm is represented by a financial figure assessed as the actual **gross** amount obtained (or loss avoided) or intended to be obtained (or avoided) by the offender as a result of the offence.

**Amount obtained or intended to be obtained
(or loss avoided or intended to be avoided)**

Fraud

For offences of fraud, conspiracy to defraud, cheating the revenue and fraudulent evasion of duty or VAT, it will usually be possible to quantify the actual or intended gross gain to the offender.

Bribery

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.

Money laundering

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.

General

Where the actual or intended gain cannot be established, the appropriate measure will be the amount that was likely to be achieved in all the circumstances. In the absence of evidence of the amount that was likely to be obtained, 10% of the relevant revenue (i.e. 10% 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.

STEP THREE**Starting point and category range**

Having determined the culpability level at step two, 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 one is multiplied by the relevant percentage figure representing culpability.

Harm	Culpability		
	A	B	C
Harm figure multiplier	Starting point 300%	Starting point 200%	Starting point 100%
	Category range 250% to 400%	Category range 100% to 300%	Category range 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 (e.g. 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 personal 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)
Early active co-operation particularly in complex cases
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:* published audited accounts (normally covering the previous three years). 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 lodge 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 audited accounts. Particular attention should be paid to turnover; profit before tax; partners' drawings, loan accounts and pension provision; assets as above. If 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 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. 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 FOUR

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 whether the fine calculated at step three meets the objectives of punishment, deterrence and the removal of gain 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 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 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.

The table below contains a **non-exhaustive** list of such additional factual elements for the court to consider. 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 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 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 SEVEN**Ancillary orders**

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

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.

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.

Annex D

Fine bands and community orders

FINE BANDS

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

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

COMMUNITY ORDERS

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

An illustrative description of examples of requirements that might be appropriate for each level is provided below. Where two or more requirements are ordered, they must be compatible with each other.

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"> • 40 – 80 hours unpaid work; • prohibited activity requirement; • curfew requirement within the lowest range (for example, up to 12 hours per day for a few weeks) 	Suitable requirements might include one or more of: <ul style="list-style-type: none"> • greater number of hours of unpaid work (for example, 80 – 150 hours); • prohibited activity requirement; • an activity requirement in the middle range (20 – 30 days); • curfew requirement within the middle range (for example, up to 12 hours for two to three months) 	Suitable requirements might include one or more of: <ul style="list-style-type: none"> • 150 – 300 hours of unpaid work; • activity requirement up to the maximum of 60 days; • curfew requirement up to 12 hours per day for 4 – 6 months; • exclusion order lasting in the region of 12 months.

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

