

# Bladed Articles and Offensive Weapons Definitive Guideline



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Effective from 1 June 2018

# Applicability of guideline

**T**he Sentencing Council issues this definitive guideline in accordance with section 120 of the Coroners and Justice Act 2009.

The guidelines on pages 3 to 14 apply to all offenders aged 18 and older, who are sentenced on or after 1 June 2018, regardless of the date of the offence.

The guideline on pages 15 to 21 applies to all children or young people, who are sentenced on or after 1 June 2018, regardless of the date of the offence.

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

“Every court –

- (a) must, in sentencing an offender, follow any sentencing guidelines which are 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.”

# Bladed Articles and Offensive Weapons – Possession

## **Possession of an offensive weapon in a public place**

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

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

Criminal Justice Act 1988 (section 139(1))

## **Possession of an offensive weapon on school premises**

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

## **Possession of an article with blade/point on school premises**

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

## **Unauthorised possession in prison of a knife or offensive weapon**

Prison Act 1952 (section 40CA)

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**Triable either way**

**Maximum: 4 years' custody**

**Offence range: Fine – 2 years 6 months' custody**

**This guideline applies only to offenders aged 18 and older**

**This offence is subject to statutory minimum sentencing provisions. See STEP THREE for further details.**

**STEP ONE**  
**Determining the offence category**

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

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

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

<b>Culpability</b> demonstrated by one or more of the following:	
<b>A</b>	<ul style="list-style-type: none"> <li>• Possession of a bladed article</li> <li>• Possession of a highly dangerous weapon*</li> <li>• Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity</li> </ul>
<b>B</b>	<ul style="list-style-type: none"> <li>• Possession of weapon (other than a bladed article or a highly dangerous weapon) – used to threaten or cause fear</li> </ul>
<b>C</b>	<ul style="list-style-type: none"> <li>• Possession of weapon (other than a bladed article or a highly dangerous weapon) – not used to threaten or cause fear</li> </ul>
<b>D</b>	<ul style="list-style-type: none"> <li>• Possession of weapon falls just short of reasonable excuse</li> </ul>

\*NB an offensive weapon is defined in legislation as ‘any article made or adapted for use for causing injury, or is intended by the person having it with him for such use’. A highly dangerous weapon is, therefore, a weapon, including a corrosive substance (such as acid), whose dangerous nature must be substantially above and beyond this. The court must determine whether the weapon is highly dangerous on the facts and circumstances of the case.

<b>Harm</b>	
The court should consider the factors set out below to determine the level of harm that has been <b>caused or was risked</b>	
<b>Category 1</b>	<ul style="list-style-type: none"> <li>• Offence committed at a school or other place where vulnerable people are likely to be present</li> <li>• Offence committed in prison</li> <li>• Offence committed in circumstances where there is a risk of serious disorder</li> <li>• Serious alarm/distress</li> </ul>
<b>Category 2</b>	<ul style="list-style-type: none"> <li>• All other cases</li> </ul>

**STEP TWO****Starting point and category range**

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

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

See page 6.

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

### Factors increasing seriousness

#### *Statutory aggravating factors:*

Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction (unless the convictions will be relevant for the purposes of the statutory minimum sentencing provisions – see step three)

Offence committed whilst on bail

#### *Other aggravating factors:*

Offence was committed as part of a group or gang

Attempts to conceal identity

Commission of offence whilst under the influence of alcohol or drugs

Attempts to conceal/dispose of evidence

Failure to comply with current court orders

Offence committed on licence or post sentence supervision

Offences taken into consideration

Failure to respond to warnings about behaviour

### Factors reducing seriousness or reflecting personal mitigation

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

Good character and/or exemplary conduct

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

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

Mental disorder or learning disability

Sole or primary carer for dependent relatives

Co-operation with the police



### STEP THREE

#### Minimum Terms – second or further relevant offence

When sentencing the offences of:

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

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

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

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

#### Unjust in all of the circumstances

In considering whether a statutory minimum sentence would be 'unjust in all of the circumstances' the court must have regard to the particular circumstances of the offence and the offender. If the circumstances of the offence, the previous offence or the offender make it unjust to impose the statutory minimum sentence then the court **must impose either a shorter custodial sentence than the statutory minimum provides or an alternative sentence.**

#### The offence:

Having reached this stage of the guideline the court should have made a provisional assessment of the seriousness of the current offence. In addition, the court must consider the seriousness of the previous offence(s) and the period of time that has elapsed between offences. Where the seriousness of the combined offences is such that it falls far below the custody threshold, or where there has been a significant period of time between the offences, the court may consider it unjust to impose the statutory minimum sentence.

#### The offender:

The court should consider the following factors to determine whether it would be unjust to impose the statutory minimum sentence;

- any strong personal mitigation;
- whether there is a realistic prospect of rehabilitation;
- whether custody will result in significant impact on others.

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

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

**STEP FIVE****Reduction for guilty pleas**

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

Where a **statutory minimum sentence** has been imposed, the court must ensure that any reduction for a guilty plea does not reduce the sentence to less than 80 per cent of the statutory minimum.

**STEP SIX****Totality principle**

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

**STEP SEVEN****Ancillary orders**

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

**STEP EIGHT****Reasons**

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

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

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

# Bladed Articles and Offensive Weapons – Threats

## **Threatening with an offensive weapon in a public place**

Prevention of Crime Act 1953 (section 1A)

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

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

## **Threatening with an article with blade/point on school premises**

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

## **Threatening with an offensive weapon on school premises**

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

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Triable either way

Maximum: 4 years' custody

Offence range: 6 months' custody – 3 years' custody

This guideline applies only to offenders aged 18 and older

This offence is subject to **statutory minimum sentencing provisions**. See **STEP THREE** for further details.

**STEP ONE**  
**Determining the offence category**

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

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

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

Culpability demonstrated by one or more of the following:	
<b>A – Higher culpability:</b>	<ul style="list-style-type: none"> <li>• Offence committed using a bladed article</li> <li>• Offence committed using a highly dangerous weapon*</li> <li>• Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity</li> <li>• Significant degree of planning or premeditation</li> </ul>
<b>B – Lower culpability:</b>	<ul style="list-style-type: none"> <li>• All other cases</li> </ul>

\*NB an offensive weapon is defined in legislation as ‘any article made or adapted for use for causing injury, or is intended by the person having it with him for such use’. A highly dangerous weapon is, therefore, a weapon, including a corrosive substance (such as acid), whose dangerous nature must be substantially above and beyond this. The court must determine whether the weapon is highly dangerous on the facts and circumstances of the case.

Harm	
The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused to the victim.	
<b>Category 1</b>	<ul style="list-style-type: none"> <li>• Offence committed at a school or other place where vulnerable people are likely to be present</li> <li>• Offence committed in prison</li> <li>• Offence committed in circumstances where there is a risk of serious disorder</li> <li>• Serious alarm/distress caused to the victim</li> <li>• Prolonged incident</li> </ul>
<b>Category 2</b>	<ul style="list-style-type: none"> <li>• All other cases</li> </ul>

**STEP TWO****Starting point and category range**

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

Harm	Culpability	
	A	B
Category 1	<b>Starting point</b> 2 years' custody	<b>Starting point</b> 1 year 6 months' custody
	<b>Category range</b> 1 year 6 months' – 3 years' custody	<b>Category range</b> 1 – 2 years' custody
Category 2	<b>Starting point</b> 15 months' custody	<b>Starting point</b> 6 months' custody
	<b>Category range</b> 9 months' – 2 years' custody	<b>Category range</b> 6 months' – 1 year 6 months' custody

See page 12.

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

### Factors increasing seriousness

#### *Statutory aggravating factors:*

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

Offence committed whilst on bail

#### *Other aggravating factors:*

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

Offence was committed as part of a group or gang

Attempts to conceal identity

Commission of offence whilst under the influence of alcohol or drugs

Attempts to conceal/dispose of evidence

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

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

Failure to comply with current court orders

Offence committed on licence or post sentence supervision

Offences taken into consideration

Failure to respond to warnings about behaviour

### Factors reducing seriousness or reflecting personal mitigation

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

Good character and/or exemplary conduct

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

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

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

Little or no planning

Sole or primary carer for dependent relatives

Co-operation with the police

### STEP THREE

#### Minimum Terms

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

#### Unjust in all of the circumstances

In considering whether a statutory minimum sentence would be ‘unjust in all of the circumstances’ the court must have regard to the particular circumstances of the offence and the offender. If the circumstances of the offence or the offender make it unjust to impose the statutory minimum sentence then the court **must impose either a shorter custodial sentence than the statutory minimum provides or an alternative sentence.**

#### The offence:

Having reached this stage of the guideline the court should have made a provisional assessment of the seriousness of the offence. Where the court has determined that the offence seriousness falls far below the custodial threshold the court may consider it unjust to impose the statutory minimum sentence.

#### The offender:

The court should consider the following factors to determine whether it would be unjust to impose the statutory minimum sentence;

- any strong personal mitigation;
- whether there is a realistic prospect of rehabilitation;
- whether custody will result in significant impact on others.

### STEP FOUR

#### Consider any factors which indicate a reduction for assistance to the prosecution

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

### STEP FIVE

#### Reduction for guilty pleas

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

Where a **statutory minimum sentence** has been imposed, the court must ensure that any reduction for a guilty plea does not reduce the sentence to less than 80 per cent of the statutory minimum.

**STEP SIX**

**Totality principle**

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

**STEP SEVEN**

**Ancillary orders**

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

**STEP EIGHT**

**Reasons**

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

**STEP NINE**

**Consideration for time spent on bail**

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



# Bladed Articles and Offensive Weapons (Possession and Threats) – Children and Young People

This guideline should be read alongside the *Overarching Principles – Sentencing Children and Young People* definitive guideline which provides comprehensive guidance on the sentencing principles and welfare considerations that the court should have in mind when sentencing children and young people.

This offence is subject to statutory minimum sentencing provisions. See STEP FIVE for further details.

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

## STEP ONE Offence Seriousness – Nature of the offence

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

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

Possession of weapon falls just short of reasonable excuse

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

Fleeting incident and no/minimal distress

**A custodial sentence or youth rehabilitation order with intensive supervision and surveillance\* or fostering\* may be justified where one or more of the following factors apply:**

Possession of a bladed article whether produced or not

Possession of a highly dangerous weapon<sup>†</sup> whether produced or not

Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity

Prolonged incident and serious alarm/distress

Offence committed at a school or other place where vulnerable people may be present

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

† NB an offensive weapon is defined in legislation as 'any article made or adapted for use for causing injury, or is intended by the person having it with him for such use'. A highly dangerous weapon is, therefore, a weapon, including a corrosive substance (such as acid), whose dangerous nature must be substantially above and beyond this. The court must determine whether the weapon is highly dangerous on the facts and circumstances of the case.

## STEP TWO

### Offence Seriousness – Aggravating and mitigating factors

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

#### Aggravating factors

##### *Statutory aggravating factors:*

Previous findings of guilt, having regard to a) the **nature** of the offence to which the finding of guilt relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the finding of guilt (unless the convictions will be relevant for the purposes of the statutory minimum sentencing provisions – see step five)

Offence committed whilst on bail

##### *Other aggravating factors (non-exhaustive):*

Significant degree of planning/premeditation

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

Victim is particularly vulnerable due to factors including but not limited to age, mental or physical disability

Offence was committed as part of a group or gang

Attempts to conceal identity

Steps taken to prevent reporting the incident/seeking assistance

Commission of offence whilst under the influence of alcohol or drugs

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

#### Mitigating factors (non-exhaustive)

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

Good character and/or exemplary conduct

Participated in offence due to bullying, peer pressure, coercion or manipulation

Little or no planning

Co-operation with the police

### STEP THREE

#### Personal Mitigation

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

#### Personal mitigating factors (non-exhaustive)

Particularly young or immature child or young person (where it affects their responsibility)

Communication or learning disabilities or mental health concerns

Unstable upbringing including but not limited to:-

- time spent looked after
- lack of familial presence or support
- disrupted experiences in accommodation or education
- exposure to drug/alcohol abuse, familial criminal behaviour or domestic abuse
- victim of neglect or abuse, or exposure to neglect or abuse of others
- experiences of trauma or loss

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

Child or young person in education, training or employment

### 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 part one, section five of the *Overarching Principles – Sentencing Children and Young People* definitive guideline.

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

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

Alternatively the court could reduce the length or severity of any punitive requirements attached to a community sentence.

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

**STEP FIVE****Statutory minimum sentencing provisions**

The following provisions apply to those young people who were aged 16 or over **on the date of the offence**<sup>1</sup>

**Threatening with Bladed Articles or Offensive Weapons**

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

**Possession of Bladed Articles or Offensive Weapons**

When sentencing the offences of:

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

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

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

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

<sup>1</sup> The age of the young person at the date of the earlier offence(s) is irrelevant

**Unjust in all of the circumstances**

In considering whether a statutory minimum sentence would be ‘unjust in all of the circumstances’ the court must have regard to the particular circumstances of the offence, any relevant previous offence and the young person. If the circumstances make it unjust to impose the statutory minimum sentence then the court **must impose an alternative sentence.**

**The offence:**

Having reached this stage of the guideline the court should have made a provisional assessment of the seriousness of the offence. Where the court has determined that the offence seriousness falls far below the custody threshold the court may consider it unjust to impose the statutory minimum sentence.

Where the court is considering a statutory minimum sentence as a result of a second or further relevant offence, consideration should be given to the seriousness of the previous offence(s) and the period of time that has elapsed between offending. Where the seriousness of the combined offences is such that it falls far below the custody threshold, or where there has been a significant period of time between the offences, the court may consider it unjust to impose the statutory minimum sentence.

**The young person:**

The statutory obligation to have regard to the welfare of a young person includes the obligation to secure proper provision for education and training, to remove the young person from undesirable surroundings where appropriate, and the need to choose the best option for the young person taking account of the circumstances of the offence.

**In having regard to the welfare of the young person, a court should ensure that it considers:**

- any mental health problems or learning difficulties/disabilities;
- any experiences of brain injury or traumatic life experience (including exposure to drug and alcohol abuse) and the developmental impact this may have had;
- any speech and language difficulties and the effect this may have on the ability of the young person (or any accompanying adult) to communicate with the court, to understand the sanction imposed or to fulfil the obligations resulting from that sanction;
- the vulnerability of young people to self harm, particularly within a custodial environment; and
- the effect on young people of experiences of loss and neglect and/or abuse.

**In certain cases the concerns about the welfare of the young person may be so significant that the court considers it unjust to impose the statutory minimum sentence.**

## STEP SIX

### Review the sentence

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

See the *Overarching Principles – Sentencing Children and Young People* definitive guideline for comprehensive guidance on the sentencing principles and welfare considerations that the court should have in mind when sentencing children and young people, and for the full range of sentences available to the court.

### Referral Orders

In cases where children or young people have offended for the first time and have pleaded guilty to committing an offence which is on the cusp of the custody threshold, youth offending teams (YOT) should be encouraged to convene a Youth Offender Panel prior to sentence (sometimes referred to as a “pseudo-panel” or “pre-panel”) where the child or young person is asked to attend before a panel and agree an intensive contract. If that contract is placed before the sentencing youth court, the court can then decide whether it is sufficient to move below custody on this occasion. The proposed contract is not something the court can alter in any way; the court will still have to make a decision between referral order and custody but can do so on the basis that if it makes a referral order it can have confidence in what that will entail in the particular case.

The court determines the length of the order but a Referral Order Panel determines the requirements of the order.

Offence seriousness	Suggested length of referral order
Low	3 – 5 months
Medium	5 – 7 months
High	7 – 9 months
Very high	10 – 12 months

The YOT may propose certain requirements and the length of these requirements may not correspond to the above table; if the court feels these requirements will best achieve the aims of the youth justice system then they may still be imposed.

## Youth Rehabilitation Order (YRO)

The following table sets out the different levels of intensity that are available under a Youth Rehabilitation Order. The level of intensity and the content of the order will depend upon the court's assessment of seriousness.

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

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

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

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

### Custodial Sentences

If a custodial sentence is imposed, the court must state its reasons for being satisfied that the offence is so serious that no other sanction would be appropriate and, in particular, why a YRO with ISS or fostering could not be justified.

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

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

# Annex:

## Fine bands and community orders

### FINE BANDS

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

<b>Fine Band</b>	<b>Starting point</b> (applicable to all offenders)	<b>Category range</b> (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

See page 23.



## COMMUNITY ORDERS

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

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

Low	Medium	High
Offences only just cross community order threshold, where the seriousness of the offence or the nature of the offender's record means that a discharge or fine is inappropriate	Offences that obviously fall within the community order band	Offences only just fall below the custody threshold or the custody threshold is crossed but a community order is more appropriate in the circumstances
In general, only one requirement will be appropriate and the length may be curtailed if additional requirements are necessary		More intensive sentences which combine two or more requirements may be appropriate
Suitable requirements might include: <ul style="list-style-type: none"> <li>Any appropriate rehabilitative requirement(s)</li> <li>40 – 80 hours of unpaid work</li> <li>Curfew requirement within the lowest range (for example up to 16 hours per day for a few weeks)</li> <li>Exclusion requirement, for a few months</li> <li>Prohibited activity requirement</li> <li>Attendance centre requirement (where available)</li> </ul>	Suitable requirements might include: <ul style="list-style-type: none"> <li>Any appropriate rehabilitative requirement(s)</li> <li>Greater number of hours of unpaid work (for example 80 – 150 hours)</li> <li>Curfew requirement within the middle range (for example up to 16 hours for 2 – 3 months)</li> <li>Exclusion requirement lasting in the region of 6 months</li> <li>Prohibited activity requirement</li> </ul>	Suitable requirements might include: <ul style="list-style-type: none"> <li>Any appropriate rehabilitative requirement(s)</li> <li>150 – 300 hours of unpaid work</li> <li>Curfew requirement up to 16 hours per day for 4 – 12 months</li> <li>Exclusion order lasting in the region of 12 months</li> </ul>
* If order does not contain a punitive requirement, suggested fine levels are indicated below:		
<b>BAND A FINE</b>	<b>BAND B FINE</b>	<b>BAND C FINE</b>

The *Magistrates' Court Sentencing Guidelines* includes further guidance on fines. The table above is also set out in the *Imposition of Community and Custodial Sentences Guideline* which includes further guidance on community orders.

**NOTES**

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