

Making off without payment

Theft Act 1978 (section 3)

Triable either way

Maximum: 2 years' custody

Offence range: Discharge- 9 months' custody

STEP ONE
Determining the offence category

The court should determine the offence category with reference **only** to the factors identified in 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 coercion, intimidation or exploitation
- Sophisticated nature of offence/significant planning
- Offence involving intimidation or the use or threat of force
- Deliberately targeting victim on basis of vulnerability

B - Medium culpability:

- A significant role where offending is part of a group activity
- All other cases where characteristics for categories A or C are not present
- Some degree of planning involved

C - Lesser culpability:

- Performed limited function under direction
- Involved through coercion, intimidation or exploitation
- Little or no planning
- Limited awareness or understanding of offence
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Harm is assessed by reference to the **actual loss** that results from the offence **and any significant additional harm** suffered by the victim or others – examples of additional harm may include **but are not limited to**: a high level of inconvenience caused to the victim, emotional distress, fear/loss of confidence caused by crime, a greater impact on the victim due to the size or type of their business.

Harm	
Category 1	Goods or services obtained above £200 or goods/services up to £200 with significant additional harm to the victim or others
Category 2	Goods or services obtained up to £200 and Little or no significant additional harm to the victim or others

STEP TWO
Starting point and category range

Having determined the category at step one, the court should use the starting point to reach a sentence within the appropriate category range in the table below. The starting point applies to all offenders irrespective of plea or previous convictions.

Harm	Culpability		
	A	B	C
Category 1 <u>Where the value greatly exceeds £200, it may be appropriate to move outside the identified range. Adjustment should be made for any significant additional harm for offences above £200</u>	Starting point 13 weeks custody Category range High level community order -9 months custody	Starting point Low level community order Category range Band C fine -High level community order	Starting point Band B fine Category range Band A fine- Low level community order
Category 2	Starting Point Medium level community order Category range Low level community order-13 weeks custody	Starting Point Band C fine Category range Band B fine – Low level community order	Starting Point Band A fine Category range Discharge –Band B fine

Consecutive sentences for multiple offences may be appropriate – please refer to the Offences Taken Into Consideration and Totality Definitive Guideline.

The court should then consider further adjustment for any aggravating or mitigating factors. The following list is a **non exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender.

Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point.

Factors increasing seriousness

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
- Failure to comply with current orders
- Offence committed on licence
- Offences taken into consideration
- Established evidence of community/wider impact

Deleted: In particular, **relevant recent convictions** may justify an upward adjustment, including outside the category range. In cases involving significant persistent offending, the community and custodial thresholds may be crossed even though the offence may otherwise warrant a lesser sentence.¶
Where the defendant is dependent on or has a propensity to misuse drugs and there is sufficient prospect of success, a community order with a drug rehabilitation requirement under section 209 of the Criminal Justice Act 2003 may be a proper alternative to a short or moderate custodial sentence.¶

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Remorse, particularly where evidenced by voluntary reparation to the victim
- Good character and/or exemplary conduct
- Serious medical conditions requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity where it affects the responsibility of the offender
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives
- Determination and/or demonstration of steps having been taken to address addiction or offending behaviour

Deleted: <#>Prevalence¶
Prevalence¶
There may be exceptional local circumstances that arise which may lead a court to decide that prevalence should influence sentencing levels. The pivotal issue in such cases will be the harm caused to the community. ¶
It is essential that the court before taking into account of prevalence: ¶
<#>has supporting evidence from an external source, for example, Community Impact statements, to justify claims that a particular crime is prevalent in their area, **and** is causing particular harm in that community, **and** ¶
<#>is satisfied that there is a compelling need to treat the offence more seriously than elsewhere. ¶

... [1]

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, or a restitution order.

STEP SEVEN

Reasons

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

STEP EIGHT

Consideration for time spent on bail

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

