

Sentencing offences for which there is no offence-specific sentencing guideline

Applicability of guideline

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, and to organisations who are sentenced on or after [date to be confirmed], 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 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.”

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 Council’s definitive guideline, *Overarching Principles – Sentencing Children and Young People*.¹

¹ [Add link](#)

STEP ONE – reaching a provisional sentence

Where there is no definitive sentencing guideline for the offence, to arrive at a provisional sentence the court should take account of all of the following (if they apply):

- the statutory maximum sentence (and if appropriate minimum sentence) for the offence;
- sentencing judgments of the Court of Appeal (Criminal Division) for the offence; and
- definitive sentencing guidelines for analogous offences

for the avoidance of doubt the court should **not** take account of any draft sentencing guidelines or definitive guidelines that are not yet in force.

When considering definitive guidelines for analogous offences the court must make adjustments for any differences in the statutory maximum sentence and in the elements of the offence.

- Where possible the court should follow the stepped approach of sentencing guidelines to arrive at the sentence.
- The seriousness of the offence is assessed by considering the **culpability** of the offender and the **harm** caused by the offending.
- The initial assessment of harm and culpability should take no account of plea or previous convictions.

When sentencing an offence for which a **fixed penalty notice** was available the reason why the offender did not take advantage of the fixed penalty will be a relevant consideration.

The court should consider which of the five purposes of sentencing,

- 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

it is seeking to achieve through the sentence that is imposed. More than one purpose might be relevant and the importance of each must be weighed against the particular offence and offender characteristics when determining sentence.

STEP TWO

Once a provisional sentence is arrived at the court should take into account factors that may make the offence more serious and factors which may reduce seriousness or reflect personal mitigation.

- Identify whether a combination of these or other relevant factors should result in any upward or downward adjustment from the sentence arrived at so far.
- It is for the sentencing court to determine how much weight should be assigned to the aggravating and mitigating factors taking into account all of the circumstances of the offence and the offender. Not all factors that apply will necessarily influence the sentence.
- The presence of an aggravating factor that is an integral part of the offence being sentenced cannot be used as justification for increasing the sentence further.
- **If considering a community or custodial sentence refer also to the *Imposition of community and custodial sentences* definitive guideline. [link/ or drop down]**
- **If considering a fine – see information on fine bands [drop down on fine bands]**

Care should be taken to avoid double counting factors including those already taken into account in assessing culpability or harm or those inherent in the offence

Statutory aggravating factors

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- Offence committed whilst on bail
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity.

Other aggravating factors: (factors are not listed in any particular order and are not exhaustive)

Care should be taken to avoid double counting factors already taken into account in assessing culpability or harm or those inherent in the offence

- Commission of offence whilst under the influence of alcohol or drugs
- Offence was committed as part of a group or gang
- Offence involved use or threat of use of a weapon
- Planning of an offence
- Commission of the offence for financial gain
- High level of profit from the offence
- Abuse of trust or dominant position
- Gratuitous degradation of victim / maximising distress to victim
- Vulnerable victim
- Victim was providing a public service or performing a public duty at the time of the offence

- Other(s) put at risk of harm by the offending
- Offence committed in the presence of other(s) (especially children)
- Actions after the event including but not limited to attempts to cover up/ conceal evidence
- Blame wrongly placed on other(s)
- Failure to respond to warnings or concerns expressed by others about the offender's behaviour
- Offence committed on licence or post sentence supervision or while subject to court order(s)
- Offence committed in custody
- Offences taken into consideration
- Offence committed in a domestic context
- Offence committed in a terrorist context
- Location and/or timing of offence
- Established evidence of community/ wider impact
- Prevalence

Factors reducing seriousness or reflecting personal mitigation (factors are not listed in any particular order and are not exhaustive)

- No previous convictions or no relevant/recent convictions
- Good character and/or exemplary conduct
- Remorse
- Self-reporting
- Cooperation with the investigation/ early admissions
- Little or no planning
- The offender was in a lesser or subordinate role if acting with others / performed limited role under direction
- Little or no financial gain
- Involved through coercion, intimidation or exploitation
- Limited awareness or understanding of the offence
- Delay since apprehension
- Activity originally legitimate
- Age and/or lack of maturity
- Sole or primary carer for dependent relatives
- Physical disability or serious medical conditions requiring urgent, intensive or long-term treatment
- Mental disorder or learning disability
- Determination and /or demonstration of steps having been taken to address addiction or offending behaviour

STEP THREE

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

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

STEP FOUR

Reduction for guilty pleas

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

STEP FIVE

Dangerousness

Where the offence is listed in Schedule 15 and/or Schedule 15B of the Criminal Justice Act 2003

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to impose a life sentence (section 224A or section 225) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

STEP SIX

Totality principle

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

STEP SEVEN

Compensation and ancillary orders

In all cases the court should consider whether to make compensation and/or other ancillary orders. The Court will be assisted by the parties in identifying relevant ancillary orders.

Where the offence involves a firearm, an imitation firearm or an offensive weapon the court may consider the criteria in section 19 of the Serious Crime Act 2007 for the imposition of a Serious Crime Prevention Order.

STEP EIGHT

Reasons

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

STEP NINE

Consideration for time spent on bail

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

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