

Sentencing Council meeting:
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Lead Council members:
Lead official:

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SC(18)APR07 - Seriousness
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1 ISSUE

1.1 At the November 2017 meeting the Council considered and agreed a guideline with expanded explanations for factors for use where there is no offence-specific guideline. At the January 2018 meeting the Council considered expanded explanations for some offence specific guidelines.

1.2 The plan had been to consider expanded explanations for the remaining offence-specific guidelines at this meeting and to sign off the whole project for consultation.

1.3 On reflection this appears to be over ambitious and is likely to place too great a burden on the Council, its officials and consultees. The Council is therefore asked to consider splitting the project into two distinct phases and signing off just the first phase for consultation at this meeting.

1.4 Both phases of the project are dependent on being able to present the guidelines in a digital form, and the Council will be able to see a demonstration of the digital guideline at this meeting.

2 RECOMMENDATION

2.1 That the Council agrees to separate the 'seriousness' project into two phases

- a guideline for where there is no offence specific guideline (the generic guideline) and
- expanded explanations for factors in offence-specific guidelines.

2.2 That the Council agrees to bring both phases into force at the same time.

2.3 That the Council considers the draft generic guideline at Annex A and agrees:

- to consult on this guideline from June – September 2018
- the approach taken in the consultation document at Annex C

2.4 The Council is also asked to agree what the status of the SGC Seriousness guideline will be once the generic guideline is definitive.

3 CONSIDERATION

Offences for which there are no offence-specific guidelines

3.1 For reference, the offences for which there is currently no offence-specific guideline include:

Firearms offences	Wildlife offences
Immigration offences	Planning offences
Modern slavery	Landlord, HMO offences
Cybercrime - hacking	Data protection offences
Kidnap and false imprisonment	Fire regulation offences
FGM	Offences against vulnerable adults
Child abduction	Perverting the course of justice / perjury
Blackmail	Forgery / counterfeiting

Splitting the project into two phases

3.2 The draft generic guideline at Annex A consists of 24 pages of detailed information on which the Council will be asking consultees to comment. While not all elements of the guideline will be of relevance to all consultees, the majority of them will need to consider the guideline in its entirety to establish which elements are relevant. It is submitted that asking consultees to consider the material in relation to offence-specific guidelines as well would be unduly burdensome, potentially confusing and could affect the quality of the responses.

3.3 Members will recall from the January meeting that the way factors are worded and used across offence specific guidelines varies considerably and that consequently the consideration of expanded explanations was somewhat complex. At the January meeting the Council considered expanded explanations for factors in the assault, burglary, sex, robbery, drugs, fraud, environmental offences, possession of offensive weapon/ bladed article and theft guidelines. At the time it was proposed to cover health and safety, dangerous dogs, intimidatory offences, arson and criminal damage and child cruelty at the March meeting. In fact there was not time on the March agenda and the matter was put back to the April meeting. On reflection it is felt that officials will be better able to present the Council with well-researched and thought through proposals given more time and that the Council will have more time to devote to this when the agendas are lighter in the early summer.

3.4 It is therefore proposed to consult on the generic guideline over the summer and to continue to develop the offence-specific material and consult on that in the autumn.

Question 1: Does the Council agree to split the project to replace the SGC seriousness guideline into two phases?

Options for completing the ‘seriousness project’

3.5 Subject to decisions made at this meeting, the generic guideline will update all of the relevant guidance in the SGC Seriousness guideline. It could therefore be argued that when the generic guideline is definitive, it would supersede the SGC guideline which would be withdrawn. However, in the context of digital guidelines, this would leave the issue of whether the generic explanations of factors should be provided for offence-specific guidelines, pending the finalisation of the offence-specific explanations. In many cases the generic and offence specific explanations will be identical (for example the text on previous convictions) but there will inevitably be differences because of variations in the way in which factors are expressed and used across offence-specific guidelines.

3.6 This could lead to a confusing situation for users of the guidelines, where explanations would be available for some but not all factors, or for some but not all guidelines. There is also a question of whether it would be legitimate to provide the generic information in the context of offence specific guidelines unless the Council had specifically consulted on that basis – which would expand the scope of the first phase of the project.

3.7 If the SGC Seriousness guideline were to remain in force, this too would be confusing and/or unhelpful to guideline users. The proposal is therefore, for the two phases of the project to replace the Seriousness guideline to come into force at the same time. A provisional timetable is suggested below:

June – September 2018	Consult on generic guideline
May – October 2018	Council meetings to develop offence specific information
December 2018 – February 2019	Consult on offence-specific guidance
May 2019	Sign off definitive version of both phases
July 2019	Publish definitive guidelines for both phases
October 2019	Both in force (SGC guideline withdrawn)

Question 2: Does the Council agree with the provisional timetable for both phases of the project?

Consideration of the generic guideline

3.8 The bulk of the content at **Annex A** has already been seen and agreed by the Council. Proposed additions to previously agreed factors/explanations are underlined and are discussed below. (A version of the guideline without the additional explanations is provided at **Annex D** to simulate how it will look as a digital guideline.)

3.9 A minor addition is suggested at step one to remind courts not to refer to draft guidelines.

Question 3: Does the Council wish to add a reference to draft guidelines?

3.10 Representations have been received from magistrates in North East Wales requesting a guideline for the offence of littering (contrary to section 87 of the Environmental Protection Act 1990). They are dealing with a large number of such offences using the single justice procedure arising from fixed penalty notices that are issued by the local authority but not paid. They have been told that the Council has no immediate plans to develop a guideline specifically for this offence, but that there will be a consultation on a guideline for sentencing offences for which there is no offence-specific guideline which may assist them.

3.11 There was not anything in the generic guideline that addressed sentencing offences for which a fixed penalty notice had been issued and so a short reference has been added at step one with further information taken from the MCSG explanatory material. Assuming the Council is happy with this inclusion, it remains to be seen whether the magistrates concerned would consider that the guideline gives sufficiently precise guidance to assist.

Question 4: Does the Council wish to add information on fixed penalty notices at step one?

3.12 Following discussions at the January Council meeting, Jill Gramann provided suggestions for improving the explanation for the mental health and learning disability mitigating factor. The suggested amended wording following those suggestions is:

Short description:

Mental disorder or learning disability

More information:

Mental disorders and learning disabilities are different things, although an individual may suffer from both. A **learning disability** is a permanent condition developing in childhood, whereas **mental illness** (or a mental health problem) can develop at any time, and is not necessarily permanent; people can get better and resolve mental health problems with help and treatment.

In the context of sentencing a broad interpretation of the terms 'mental disorder' and learning disabilities' should be adopted to include:

- Offenders with an intellectual impairment (low IQ);
- Offenders with a cognitive impairment such as (but not limited to) dyslexia, attention deficit hyperactivity disorder (ADHD);
- Offenders with an autistic spectrum disorder (ASD) including Asperger's syndrome;
- Offenders with a personality disorder;
- Offenders with a mental illness.

Offenders may have a combination of the above conditions.

Sentencers should be alert to the fact that not all mental disorders or learning disabilities are visible or obvious.

A mental disorder or learning disability can affect both:

1. the offender's responsibility for the offence and
2. the impact of the sentence on the offender.

The court will be assisted by a PSR and, where appropriate, medical reports in assessing:

1. the degree to which a mental disorder or learning disability has reduced the offender's responsibility for the offence. This may be because the condition had an impact on the offender's ability to understand the consequences of their actions, to limit impulsivity and/or to exercise self-control.
 - a relevant factor will be the degree to which a mental disorder or learning disability has been exacerbated by the actions of the offender (for example by the **voluntary** abuse of drugs or alcohol or by **voluntarily** failing to follow medical advice);
 - in considering the extent to which the offender's actions were voluntary, the extent to which a mental disorder or learning disability has an impact on the offender's ability to exercise self-control or to engage with medical services will be a relevant consideration.
2. any effect of the mental disorder or learning disability on the impact of the sentence on the offender; a mental disorder or learning disability may make it more difficult for the offender to cope with custody or to comply with a community order.

3.13 The Council will shortly be commencing work on an overarching guideline on mental health and when that is published as a definitive guideline (the plan is to publish in December 2019), this factor will be amended to direct users to that guideline. In the interim the above wording will remind sentencers to consider mental health issues and provide them with some assistance as to the relevance of mental health to sentencing.

Question 5: Does the Council agree with the proposed 'Mental health or learning disability' factor?

Comparing the proposed guideline with the SGC Seriousness guideline

3.14 Currently the SGC Seriousness guideline is still in force, despite the fact that parts of it have been superseded by the Imposition guideline. If the proposed generic guideline is to replace the SGC guideline it will need to cover all of the useful content albeit that the factors in both guidelines are non-exhaustive.

3.15 The table at **Annex B** lists all the factors in the draft guideline and the equivalent factor in the SGC guideline. The numbering in the table is for ease of identifying the factors.

3.16 The factor at row 4 of the table, 'failure to respond to previous sentences', is covered by the expanded guidance on previous convictions in the draft guideline and it is not proposed to add it as a standalone factor. The factor at row 9 of the table, 'an intention to commit more serious harm than resulted from the offence' is addressed by the guidance on harm:

Where harm was intended but no harm or a lower level of harm resulted – the sentence will normally be assessed with reference to the level of harm intended.

3.17 Views are sought as to whether the factor at row 10, 'deliberate and gratuitous violence or damage to property, over and above what is needed to carry out the offence' should be added as a specific factor to the generic guideline. At annex A this wording has been added to the expanded information on culpability at step one.

3.18 The factor (at row 14) 'professional offending' has not been included in the current draft of the guideline. It was included in a draft considered by the Council at the October 2017 meeting but there was some difficulty in establishing what it meant. The interpretation in the draft guideline was offending in a commercial context, but Council members thought that 'professional' implied organised or career criminals. The 'commercial' offending aspect is covered by the factors at rows 12 and 13 of the table. Views are sought as to whether there are aspects of 'professional' offending that are not captured by these factors and those relating to planning and role (in culpability).

3.19 The factor at row 18 relating to hostility to a minority group is not included as it is largely covered by the statutory aggravating factor at row 3 and is not a factor that is used in any other Sentencing Council guidelines.

3.20 The factor at row 20 relating to multiple victims has not been included. It is proposed to add the word 'collective' to the second bullet point of the explanation under harm so that it reads:

- An assessment of harm should generally reflect the collective impact of the offence upon the victim(s) and may include direct harm (including physical injury, psychological injury and financial loss) and consequential harm.

3.21 Where there are multiple victims giving rise to multiple offences then the Totality guideline (at step 6) sets out the approach to be taken.

3.22 An additional point has been added to the explanation under harm to cover the SGC factor at row 21:

- Where the harm caused is greater than that intended - the sentence will normally be assessed with reference to the level of harm suffered by the victim.

3.23 The factor at row 22 has not been added as a specific factor; it is covered by the general consideration of harm and, in part, by the explanation under vulnerable victim

- Culpability is increased if an offender persisted in the offending once it was obvious that the victim was vulnerable (for example continuing to attack an injured victim)

3.24 The factor at row 23 has been adapted and added to the harm explanation:

- When considering the value of property lost or damaged the court should also take account of any sentimental value to the victim(s); and any consequential loss caused by disruption to a victim's life or business

3.25 The mitigating factor at row 52 has not been added. It is unlikely to be relevant to any of the offences that the generic guideline is designed to cover and could be seen to represent 'victim blaming'.

Question 6: Does the Council agree to the amendments proposed above?

Question 7: Is the Council content that the generic guideline covers all of the relevant factors in the SGC guideline?

Other factors

3.26 The Council previously suggested that reference should be made to the Terrorism guideline for those offences with a terrorist element. The following factor and explanation have been added:

Short description:

Offence committed in a terrorist context

More information:

Where there is a terrorist element to the offence, refer also to the *Terrorism Offences* definitive guideline [link]

Question 8: Does the Council agree to include the reference to the Terrorism guideline?

Consultation outline

3.27 The consultation on the generic guideline will be published on the Council's website only. The consultation will be publicised widely, as there are a large number of stakeholders to whom it will be relevant. Consultees will be directed to the online consultation and to a digital version of the draft guideline on a dummy website. A text version of the consultation document and the guideline will be available for download for those users (such as those who send in collective responses) who find this to be more convenient.

3.28 An early and incomplete draft of the consultation document is provided at **Annex C**. The approach taken is to treat the additional information in the generic guideline as largely self-explanatory; otherwise the consultation document would be attempting to explain the explanations. The final draft will be circulated to Council members for comment before publication.

Question 9: Is the Council content with the approach taken in the draft consultation document?

4 IMPACT AND RISKS

4.1 This guideline is wide in scope and so has the potential for a significant impact, but as the guideline mainly seeks to encourage what is already best practice, any impact on sentence levels and thereby correctional resources is likely to be minor. The resource assessment for the draft guideline will be framed in general terms as it is impossible to quantify the impact with any accuracy. The Council has already indicated that it considers that the guideline is unlikely to have an overall inflationary effect on sentencing.

4.2 The timetable for this guideline is based on the assumption that guidelines will be accessed digitally in the Crown Court as well as in magistrates' courts. If there is any delay in the provision of digital guidelines in the Crown Court, this may have an adverse effect on the delivery of the replacement for the *Seriousness* guideline.

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.

More information:


Culpability is assessed with reference to the offender's role, level of intention and/or premeditation and the extent and sophistication of planning.

- The court should balance these characteristics to reach a fair assessment of the offender's overall culpability in the context of the circumstances of the offence.

- The relevance of factors will vary depending on the type of offending. Where a characteristic is inherent in the offence, the mere presence of that characteristic will not be determinative of the level of culpability.
- Deliberate or gratuitous violence or damage to property, over and above what is needed to carry out the offence will normally indicate a higher level of culpability
- For offences where there is no requirement for the offender to have any level of intention, recklessness, negligence, dishonesty, knowledge, understanding or foresight for the offence to be made out, the range of culpability **may** be inferred from the circumstances of the offence as follows:

Highest level  Lowest level	Deliberate - intentional act or omission
	Reckless - acted or failed to act regardless of the foreseeable risk
	Negligent - failed to take steps to guard against the act or omission
	Low/no culpability - act or omission with none of the above features

- For offences that require some level of culpability (eg intention, recklessness or knowledge) to be made out, the range of culpability will be narrower. Relevant factors **may** typically include but are not limited to:

Highest level  Lowest level	High level of planning/ sophistication/ leading role
	Some planning/ significant role
	Little or no planning/ minor role

- These models of assessing culpability will not be applicable to all offences

Harm – *caused, risked and/or intended*

- There may be primary and secondary victims of an offence and, depending on the offence, victims may include one or more individuals, a community, the general public, the state, the environment and/or animal(s). In some cases there may not be an identifiable victim.
- An assessment of harm should generally reflect the collective impact of the offence upon the victim(s) and may include direct harm (including physical injury, psychological harm and financial loss) and consequential harm.
- When considering the value of property lost or damaged the court should also take account of any sentimental value to the victim(s); and any consequential loss caused by disruption to a victim’s life or business.
- Where harm was intended but no harm or a lower level of harm resulted – the sentence will normally be assessed with reference to the level of harm intended.
- Where the harm caused is greater than that intended - the sentence will normally be assessed with reference to the level of harm suffered by the victim.
- Dealing with a risk of harm involves consideration of both the likelihood of harm occurring and the extent of it if it does.
- Risk of harm is less serious than the same actual harm. Where the offence has caused risk of harm but no (or less) actual harm the normal approach is to move down to the next category of harm. This may not be appropriate if either the likelihood or extent of potential harm is particularly high.
- A victim personal statement (VPS) may assist the court in assessing harm, but the absence of a VPS should not be taken to indicate the absence of harm.

Penalty notices may be issued as an alternative to prosecution in respect of a range of offences. An admission of guilt is not a prerequisite to issuing a penalty notice.

- An offender who is issued with a penalty notice may nevertheless be prosecuted for the offence if he or she:
- asks to be tried for the offence; or
- fails to pay the penalty within the period stipulated in the notice and the prosecutor decides to proceed with charges.
- In some cases of non-payment, the penalty is automatically registered and enforceable as a fine without need for recourse to the courts. This procedure applies to penalty notices for disorder and fixed penalty notices issued in respect of certain road traffic offences but not to fixed penalty notices issued for most other criminal offences

When sentencing in cases in which a penalty notice was available:

- the fact that the offender did not take advantage of the penalty (whether that was by requesting a hearing or failing to pay within the specified timeframe) does not increase the seriousness of the offence and must not be regarded as an aggravating factor. The appropriate sentence must be determined in accordance with the sentencing principles set out in this guideline (including the amount of any fine, which must take an offender's financial circumstances into account), disregarding the availability of the penalty;
- where a penalty notice could not be offered or taken up for reasons unconnected with the offence itself, such as administrative difficulties outside the control of the offender, the starting point should be a fine equivalent to the amount of the penalty and no order of costs should be imposed. The offender should not be disadvantaged by the unavailability of the penalty notice in these circumstances.

Where an offender has had previous penalty notice(s), the fact that an offender has previously been issued with a penalty notice does not increase the seriousness of the current offence and must not be regarded as an aggravating factor. It may, however, properly influence the court's assessment of the offender's suitability for a particular sentence, so long as it remains within the limits established by the seriousness of the current offence.

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

Short description:

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

More information:

Guidance on the Use of Previous Convictions

The following guidance should be considered when seeking to determine the degree to which previous convictions should aggravate sentence:

Section 143 of the Criminal Justice Act states that:

In considering the seriousness of an offence (“the current offence”) committed by an offender who has one or more previous convictions, the court must treat each previous conviction as an aggravating factor if (in the case of that conviction) the court considers that it can reasonably be so treated having regard, in particular, 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.

1. Previous convictions are considered at step two in the Council's offence-specific guidelines.
2. The primary significance of previous convictions is the extent to which they indicate trends in offending behaviour and possibly the offender's response to earlier sentences;
3. Previous convictions are normally **relevant** to the current offence when they are of a similar type;
4. Previous convictions of a type different from the current offence **may** be relevant where they are an indication of persistent offending or escalation and/or a failure to comply with previous court orders;
5. Numerous and frequent previous convictions might indicate an underlying problem (for example, an addiction) that could be addressed more effectively in the community and will not necessarily indicate that a custodial sentence is necessary;
6. If the offender received a non-custodial disposal for the previous offence, a court should not necessarily move to a custodial sentence for the fresh offence;
7. In cases involving significant persistent offending, the community and custody thresholds may be crossed even though the current offence normally warrants a lesser sentence.

Any custodial sentence imposed to reflect persistent offending rather than the current offence should be kept to the necessary minimum.

8. The aggravating effect of relevant previous convictions reduces with the passage of time; **older convictions are less relevant** to the offender's culpability for the current offence and less likely to be predictive of future offending.
9. Where the previous offence is particularly old it will normally have little relevance for the current sentencing exercise;
10. The court should consider the time gap since the previous conviction and the reason for it. Where there has been a significant gap between previous and current convictions or a reduction in the frequency of offending this may indicate that the offender has made attempts to desist from offending in which case the aggravating effect of the previous offending will diminish.
11. Where the current offence is significantly less serious than the previous conviction (suggesting a decline in the gravity of offending), the previous conviction may carry less weight.
12. When considering the totality of previous offending a court should take a rounded view of the previous crimes and not simply aggregate the individual offences.
13. Where information is available on the context of previous offending this may assist the court in assessing the relevance of that prior offending to the current offence.

Short description:

Offence committed whilst on bail

More information:

S143 (3) Criminal Justice Act 2003 states:

In considering the seriousness of any offence committed while the offender was on bail, the court must treat the fact that it was committed in those circumstances as an aggravating factor.

Short description:

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.

More information:

See below for the statutory provisions.

- **Note the requirement for the court to state that the offence has been aggravated by the relevant hostility.**
- **Where the element of hostility is core to the offending, the aggravation will be higher than where it plays a lesser role.**

Increase in sentences for racial or religious aggravation

s145(2) of the Criminal Justice Act 2003 states:

If the offence was racially or religiously aggravated, the court—

- (a) *must treat that fact as an aggravating factor, and*
- (b) *must state in open court that the offence was so aggravated.*

An offence is racially or religiously aggravated for these purposes if—

at the time of committing the offence, or immediately before or after doing so, the offender demonstrates towards the victim of the offence, hostility based on the victim's membership (or presumed membership) of a racial or religious group; **or**

the offence is motivated (wholly or partly) by hostility towards members of a racial or religious group based on their membership of that group.

“membership”, in relation to a racial or religious group, includes association with members of that group;

“presumed” means presumed by the offender.

It is immaterial whether or not the offender's hostility is also based, to any extent, on any other factor not mentioned above.

“racial group” means a group of persons defined by reference to race, colour, nationality (including citizenship) or ethnic or national origins.

“religious group” means a group of persons defined by reference to religious belief or lack of religious belief.

Increase in sentences for aggravation related to disability, sexual orientation or transgender identity

s146 of the Criminal Justice Act 2003 states:

(1) This section applies where the court is considering the seriousness of an offence committed in any of the circumstances mentioned in subsection (2).

(2) Those circumstances are—

(a) that, at the time of committing the offence, or immediately before or after doing so, the offender demonstrated towards the victim of the offence hostility based on—

- (i) the sexual orientation (or presumed sexual orientation) of the victim,
- (ii) a disability (or presumed disability) of the victim, or
- (iii) the victim being (or being presumed to be) transgender, or

(b) that the offence is motivated (wholly or partly)—

- (i) by hostility towards persons who are of a particular sexual orientation,
- (ii) by hostility towards persons who have a disability or a particular disability or
- (iii) by hostility towards persons who are transgender.

(3) The court—

(a) must treat the fact that the offence was committed in any of those circumstances as an aggravating factor, and

(b) must state in open court that the offence was committed in such circumstances.

(4) It is immaterial for the purposes of paragraph (a) or (b) of subsection (2) whether or not the offender's hostility is also based, to any extent, on any other factor not mentioned in that paragraph.

(5) In this section “disability” means any physical or mental impairment.

(6) In this section references to being transgender include references to being transsexual, or undergoing, proposing to undergo or having undergone a process or part of a process of gender reassignment.

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

Short description:

Commission of offence whilst under the influence of alcohol or drugs

More information:

- The fact that an offender is **voluntarily** intoxicated at the time of the offence will tend to increase the seriousness of the offence provided that the intoxication has **contributed to the offending**.
- In the case of a person addicted to drugs or alcohol the intoxication may be considered not to be voluntary, but the court should have regard to the extent to which the offender has engaged with any assistance in dealing with the addiction in making that assessment.
- An offender who has voluntarily consumed drugs and/or alcohol must accept the consequences of the behaviour that results, even if it is out of character.

Short description:

Offence was committed as part of a group or gang

More information:

The mere membership of a group (two or more persons) or gang should not be used to increase the sentence, but where the **offence was committed as part** of a group or gang this will normally make it more serious because:

- the **harm** caused (both physical or psychological) or the potential for harm may be greater and/or
- the **culpability** of the offender may be higher (the role of the offender within the group will be a relevant consideration).

When sentencing young adult offenders, consideration should also be given to the guidance on the mitigating factor relating to age and immaturity when considering the significance of group offending.

Short description:

Offence involved use or threat of use of a weapon

More information:

- A ‘weapon’ can take many forms and may include a shod foot
- The use or production of a weapon has relevance
 - to the **culpability** of the offender where it indicates planning or intention to cause harm; and
 - to the **harm** caused (both physical or psychological) or the potential for harm.
- Relevant considerations will include:
 - the dangerousness of the weapon;
 - whether the offender brought the weapon to the scene, or just used what was available on impulse;
 - the context in which the weapon was threatened, used or produced.

Short description:

Planning of an offence

More information:

- Evidence of planning normally indicates a higher level of intention and pre-meditation which increases the level of culpability.
- The greater the degree of planning the greater the culpability

Short description:

Commission of the offence for financial gain

More information:

- Where an offence (which is not one which by its nature is an acquisitive offence) has been committed wholly or in part for financial gain or the avoidance of cost, this will increase the seriousness.
- Where the offending is committed in a commercial context for financial gain or the avoidance of costs, this will normally indicate a higher level of culpability.
 - examples would include, but are not limited to, dealing in unlawful goods, failing to comply with a regulation or failing to obtain the necessary licence or permission in order to avoid costs.
 - offending of this type can undermine legitimate businesses.
- Where possible, if a financial penalty is imposed, it should remove any economic benefit the offender has derived through the commission of the offence including:
 - avoided costs;
 - operating savings;
 - any gain made as a direct result of the offence.
- Where the offender is fined, the amount of economic benefit derived from the offence should normally be added to the fine. The fine should meet, in a fair and proportionate way, the objectives of punishment, deterrence and the removal of gain derived through the commission of the offence; it should not be cheaper to offend than to comply with the law.
- Where it is not possible to calculate or estimate the economic benefit, the court may wish to draw on information from the enforcing authorities about the general costs of operating within the law.

- When sentencing **organisations** the fine must be **sufficiently substantial to have a real economic impact which will bring home to both management and shareholders the need to comply with the law.**

Short description:

High level of profit from the offence

More information:

- A high level of profit is likely to indicate:
 - high culpability in terms of planning and
 - a high level of harm in terms of loss caused to victims or the undermining of legitimate businesses
- In most situations a high level of gain will be a factor taken in to account at step one – care should be taken to avoid double counting.
- Where possible if a financial penalty is imposed it should remove any economic benefit the offender has derived through the commission of the offence including:
 - avoided costs;
 - operating savings;
 - any gain made as a direct result of the offence.
- Where the offender is fined, the amount of economic benefit derived from the offence should normally be added to the fine. The fine should meet, in a fair and proportionate way, the objectives of punishment, deterrence and the removal of gain derived through the commission of the offence; it should not be cheaper to offend than to comply with the law.
- Where it is not possible to calculate or estimate the economic benefit, the court may wish to draw on information from the enforcing authorities about the general costs of operating within the law.
- When sentencing **organisations** the fine must be **sufficiently substantial to have a real economic impact which will bring home to both management and shareholders the need to comply with the law.**

Short description:

Abuse of trust or dominant position

More information:

- In order for an abuse of trust to make an offence more serious the relationship between the offender and victim(s) must be one that would give rise to the offender having a significant level of responsibility towards the victim(s) on which the victim(s) would be entitled to rely.
- Abuse of trust may occur in many factual situations. Examples may include relationships such as teacher and pupil, parent and child, professional adviser and client, or carer (whether paid or unpaid) and dependant. It may also include ad hoc situations such as a late-night taxi driver and a lone passenger. It would **not** generally include a familial relationship without a significant level of responsibility.
- Where an offender has been given an inappropriate level of responsibility, abuse of trust is unlikely to apply.
- A close examination of the facts is necessary and a clear justification should be given if abuse of trust is to be found.

Short description:

Gratuitous degradation of victim / maximising distress to victim

More information:

Where an offender deliberately causes **additional** harm to a victim over and above that which is an essential element of the offence - this will increase seriousness. Examples may include, but are not limited to, posts of images on social media designed to cause additional distress to the victim (where not separately charged).

Short description:

Vulnerable victim

More information:

- An offence is more serious if the victim is vulnerable because of personal circumstances such as (but not limited to) age, illness or disability (unless the vulnerability of the victim is an element of the offence).
 - Other factors such as the victim being isolated, incapacitated through drink or being in an unfamiliar situation **may** lead to a court considering that the offence is more serious.
 - The extent to which any vulnerability may impact on the sentence is a matter for the court to weigh up in each case.
 - Culpability will be increased if the offender targeted a victim because of an actual or perceived vulnerability.
 - Culpability will be increased if the victim is made vulnerable by the actions of the offender (such as a victim who has been intimidated or isolated by the offender).
 - Culpability is increased if an offender persisted in the offending once it was obvious that the victim was vulnerable (for example continuing to attack an injured victim).
 - The level of harm (physical, psychological or financial) is likely to be increased if the victim is vulnerable.
-

Short description:

Victim was providing a public service or performing a public duty at the time of the offence

More information:

This reflects:

- the fact that people in public facing roles are more exposed to the possibility of harm and consequently more vulnerable and/or
 - the fact that someone is working for the public good merits the additional protection of the courts.
-

Short description:

Other(s) put at risk of harm by the offending

More information:

- Where there is risk of harm to other(s) not taken in account at step one and not subject to a separate charge, this makes the offence more serious.

- Dealing with a risk of harm involves consideration of both the likelihood of harm occurring and the extent of it if it does.
-

Short description:

Offence committed in the presence of other(s) (especially children)

More information:

- This reflects the psychological harm that may be caused to those who witnessed the offence.
 - The presence of one or more children may in some situations make the primary victim more vulnerable – for example an adult may be less able to resist the offender if concerned about the safety or welfare of children present.
-

Short description:

Actions after the event including but not limited to attempts to cover up/ conceal evidence

More information:

Unless this conduct is the subject of separate charges, it should be taken into account to make the offence more serious.

Short description:

Blame wrongly placed on other(s)

More information:

- Where the investigation has been hindered and/or other(s) have suffered as a result of being wrongly blamed by the offender, this will make the offence more serious.
 - This factor will **not** be engaged where an offender has simply exercised his or her right not to assist the investigation or accept responsibility for the offending.
-

Short description:

Failure to respond to warnings or concerns expressed by others about the offender's behaviour

More information:

Where an offender has had the benefit of warnings or advice about their conduct but has failed to heed it, this would make the offender more blameworthy.

This may particularly be the case when:

- such warning(s) or advice were of an official nature or from a professional source and/or
 - the warning(s) were made at the time of or shortly before the commission of the offence.
-

Short description:

Offence committed on licence or post sentence supervision or while subject to court order(s)

More information:

- An offender who is subject to licence or post sentence supervision is under a particular obligation to desist from further offending.
 - Commission of an offence while subject to a **relevant** court order makes the offence more serious (where not dealt with separately as a breach of that order).
 - Care should be taken to avoid double counting matters taken into account when considering previous convictions.
-

Short description:

Offence committed in custody

More information:

- Offences committed in custody are more serious because they undermine the fundamental need for control and order which is necessary for the running of prisons and maintaining safety.
 - Generally the sentence for the new offence will be consecutive to the sentence being served as it will have arisen out of an unrelated incident. The court must have regard to the totality of the offender's criminality when passing the second sentence, to ensure that the total sentence to be served is just and proportionate. Refer to the Totality guideline [\[link\]](#) for detailed guidance.
 - Care should be taken to avoid double counting matters taken into account when considering previous convictions.
-

Short description:

Offence committed in a domestic context

More information:

Refer to the *Domestic abuse* guideline [\[Link\]](#)

Short description:

Offence committed in a terrorist context

More information:

Where there is a terrorist element to the offence, refer also to the *Terrorism Offences* definitive guideline [\[link\]](#)

Short description:

Location and/or timing of offence

More information:

- In general, an offence is not made more serious by the location and/or timing of the offence except in ways taken into account by other factors in this guideline (such as planning, vulnerable victim, offence committed in a domestic setting, maximising distress to victim, others put at risk of harm by the offending, offence committed in the presence of others). Care should be taken to avoid double counting.

- Courts should be cautious about aggravating an offence by reason of it being committed for example at night, or in broad daylight, in a crowded place or in an isolated place unless it also indicates increased harm or culpability not already accounted for.
- An offence may be more serious when it is committed in places in which there is a particular need for discipline or safety such as prisons, courts, schools or hospitals.

Short description:

Established evidence of community/ wider impact

More information:

- This factor should increase the sentence only where there is clear evidence of wider harm not already taken into account elsewhere. A community impact statement will assist the court in assessing the level of impact.
- For issues of prevalence see the separate guidance.

Short description:

Prevalence

More information:

- Sentencing levels in offence specific guidelines take account of collective social harm. Accordingly offenders should normally be sentenced by straightforward application of the guidelines without aggravation for the fact that their activity contributed to a harmful social effect upon a neighbourhood or community.
- It is not open to a sentencer to increase sentence for prevalence in ordinary circumstances or in response to a personal view that there is 'too much of this sort of thing going on in this area'.
- First, there must be evidence provided to the court by a responsible body or by a senior police officer.
- Secondly, that evidence must be before the court in the specific case being considered with the relevant statements or reports having been made available to the Crown and defence in good time so that meaningful representations about that material can be made.
- Even if such material is provided, a sentencer will only be entitled to treat prevalence as an aggravating factor if satisfied
 - that the level of harm caused in a particular locality is significantly higher than that caused elsewhere (and thus already inherent in the guideline levels);
 - that the circumstances can properly be described as exceptional; **and**
 - that it is just and proportionate to increase sentence for such a factor in the particular case being sentenced.

Short description:

Offences taken into consideration

More information:

Taken from the Offences taken into consideration definitive guideline:

General principles

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

Offences to be Taken into Consideration

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

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

- where the TIC is likely to attract a greater sentence than the conviction offence;
- where it is in the public interest that the TIC should be the subject of a separate charge;
- where the offender would avoid a prohibition, ancillary order or similar consequence which it would have been desirable to impose on conviction. For example:
 - where the TIC attracts mandatory disqualification or endorsement and the offence(s) for which the defendant is to be sentenced do not;
- where the TIC constitutes a breach of an earlier sentence;
- where the TIC is a specified offence for the purposes of section 224 of the Criminal Justice Act 2003, but the conviction offence is non-specified; or
- where the TIC is not founded on the same facts or evidence or part of a series of offences of the same or similar character (unless the court is satisfied that it is in the interests of justice to do so).

Jurisdiction

The magistrates' court cannot take into consideration an indictable only offence. The Crown Court can take into account summary only offences provided the TICs are founded on the same facts or evidence as the indictable charge, or are part of a series of offences of the same or similar character as the indictable conviction offence

Procedural safeguards

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

- the police or prosecuting authorities have prepared a schedule of offences (TIC schedule) that they consider suitable to be taken into consideration. The TIC schedule should set out the nature of each offence, the date of the offence(s), relevant detail about the offence(s) (including, for example, monetary values of items) and any other brief details that the court should be aware of;
- a copy of the TIC schedule must be provided to the defendant and his representative (if he has one) before the sentence hearing. The defendant should sign the TIC schedule to provisionally admit the offences;
- at the sentence hearing, the court should ask the defendant in open court whether he admits each of the offences on the TIC schedule and whether he wishes to have them taken into consideration;

- if there is any doubt about the admission of a particular offence, it should not be accepted as a TIC. Special care should be taken with vulnerable and/or unrepresented defendants;
- if the defendant is committed to the Crown Court for sentence, this procedure must take place again at the Crown Court even if the defendant has agreed to the schedule in the magistrates' court.

Application

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

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

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

3. Continue through the sentencing process including:
 - consider whether the frank admission of a number of offences is an indication of a defendant's remorse or determination and/ or demonstration of steps taken to address addiction or offending behaviour;
 - any reduction for a guilty plea should be applied to the overall sentence;
 - the principle of totality;
 - when considering ancillary orders these can be considered in relation to any or all of the TICS, specifically:
 - compensation orders;
 - restitution orders

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

Short description:

No previous convictions or no relevant/recent convictions

More information:

- First time offenders generally represent a lower risk of re-offending. Re-offending rates for first offenders are significantly lower than rates for repeat offenders. In addition, first offenders are normally regarded as less blameworthy than offenders who have committed the same crime several times already. For these reasons first offenders attract a mitigated sentence (unless the crime is particularly serious).

- Where there are previous offences but these are old and /or are for offending of a different nature, the sentence will normally be reduced to reflect that the new offence is not part of a pattern of offending and there is therefore a lower likelihood of reoffending.
- When assessing whether a previous conviction is 'recent' the court should consider the time gap since the previous conviction and the reason for it.
- Previous convictions are likely to be 'relevant' when they share characteristics with the current offence (examples of such characteristics include – but are not limited to – dishonesty, violence, abuse of position or trust, use or possession of weapons, disobedience of court orders). In general the more serious the previous offending the longer it will retain relevance.

Short description:

Good character and/or exemplary conduct

More information:

This factor may apply whether or not the offender has previous convictions. Evidence that an offender has demonstrated positive good character through, for example, charitable works may reduce the sentence.

However, this factor is less likely to be relevant where the offending is very serious. Where an offender has used their good character or status to facilitate or conceal the offending it could be treated as an aggravating factor.

Short description:

Remorse

More information:

The court will need to be satisfied that the offender is genuinely remorseful for the offending behaviour in order to reduce the sentence.

Short description:

Self-reporting

More information:

Where an offender has self-reported to the authorities, particularly in circumstances where the offence may otherwise have gone undetected, this should reduce the sentence (separate from any guilty plea reduction at step four).

Short description:

Cooperation with the investigation/ early admissions

More information:

Assisting or cooperating with the investigation and /or making pre-court admissions may ease the effect on victims and witnesses and save valuable police time justifying a reduction in sentence (separate from any guilty plea reduction at step four).

Short description:

Little or no planning

More information:

Where an offender has committed the offence with little or no prior thought, this is likely to indicate a lower level of culpability and therefore justify a reduction in sentence.

However, impulsive acts of unprovoked violence or other types of offending may indicate a propensity to behave in a manner that would not normally justify a reduction in sentence.

Short description:

The offender was in a lesser or subordinate role if acting with others / performed limited role under direction

More information:

Whereas acting as part of a group or gang may make an offence more serious, if the offender's role was minor this may indicate lower culpability and justify a reduction in sentence.

Short description:

Little or no financial gain

More information:

Where an offence (which is not one which by its nature is an acquisitive offence) is committed in a context where financial gain could arise, the culpability of the offender may be reduced where it can be shown that the offender did not seek to gain financially from the conduct and did not in fact do so.

Short description:

Involved through coercion, intimidation or exploitation

More information:

- Where this applies it will reduce the culpability of the offender.
- This factor may be of particular relevance where the offender has been the victim of domestic abuse, trafficking or modern slavery, but may also apply in other contexts.
- Courts should be alert to factors that suggest that an offender may have been the subject of coercion, intimidation or exploitation which the offender may find difficult to articulate, and where appropriate ask for this to be addressed in a PSR.

- This factor **may** indicate that the offender is vulnerable and would find it more difficult to cope with custody or to complete a community order.

Short description:

Limited awareness or understanding of the offence

More information:

The factor may apply to reduce the culpability of an offender

- acting alone who has not appreciated the significance of the offence **or**
- where an offender is acting with others and does not appreciate the extent of the overall offending.

In such cases the sentence may be reduced from that which would have applied if the offender had understood the full extent of the offence and the likely harm that would be caused.

Short description:

Delay since apprehension

More information:

Where there has been an **unreasonable** delay in proceedings since apprehension **that is not the fault of the offender**, the court may take this into account by reducing the sentence.

Short description:

Activity originally legitimate

More information:

Where the offending arose from an activity which was originally legitimate, but became unlawful (for example because of a change in the offender's circumstances or a change in regulations), this **may** indicate lower culpability and thereby a reduction in sentence.

Short description:

Age and/or lack of maturity

More information:

Age and/or lack of maturity can affect:

- the offender's responsibility for the offence and
- the effect of the sentence on the offender.

Either or both of these considerations may justify a reduction in the sentence.

The emotional and developmental age of an offender is of at least equal importance to their chronological age (if not greater).

In particular young adults may still be developing neurologically and consequently be less able to:

- evaluate the consequences of their actions
- limit impulsivity
- limit risk taking

Young adults are likely to be susceptible to peer pressure and are more likely to take risks or behave impulsively when in company with their peers.

Environment plays a role in neurological development and factors such as childhood deprivation or abuse will affect development.

An immature offender may find it more difficult to cope with custody or to complete a community order.

There is a greater capacity for change in immature offenders and they may be receptive to opportunities to address their offending behaviour and change their conduct.

When considering a custodial or community sentence for a young adult the National Probation Service should address these issues in a PSR.

Short description:

Sole or primary carer for dependent relatives

More information:

This factor is particularly relevant where an offender is on the cusp of custody or where the suitability of a community order is being considered. For offenders on the cusp of custody, imprisonment should not be imposed where there would be an impact on dependants which would make a custodial sentence disproportionate to achieving the aims of sentencing. For more serious offences where a substantial period of custody is appropriate, this factor will carry less weight.

Short description:

Physical disability or serious medical conditions requiring urgent, intensive or long-term treatment

More information:

Such conditions as may affect the impact of a sentence on the offender may justify a reduction in sentence.

Short description:

Mental disorder or learning disability

More information:

Mental disorders and learning disabilities are different things, although an individual may suffer from both. A **learning disability** is a permanent condition developing in childhood, whereas **mental illness** (or a mental health problem) can develop at any time, and is not necessarily permanent; people can get better and resolve mental health problems with help and treatment.

In the context of sentencing a broad interpretation of the terms ‘mental disorder’ and learning disabilities’ should be adopted to include:

- Offenders with an intellectual impairment (low IQ);
- Offenders with a cognitive impairment such as (but not limited to) dyslexia, attention deficit hyperactivity disorder (ADHD);
- Offenders with an autistic spectrum disorder (ASD) including Asperger’s syndrome;
- Offenders with a personality disorder;
- Offenders with a mental illness.

Offenders may have a combination of the above conditions.

Sentencers should be alert to the fact that not all mental disorders or learning disabilities are visible or obvious.

A mental disorder or learning disability can affect both:

1. the offender’s responsibility for the offence and
2. the impact of the sentence on the offender.

The court will be assisted by a PSR and, where appropriate, medical reports in assessing:

1. the degree to which a mental disorder or learning disability has reduced the offender’s responsibility for the offence. This may be because the condition had an impact on the offender’s ability to understand the consequences of their actions, to limit impulsivity and/or to exercise self-control.
 - a relevant factor will be the degree to which a mental disorder or learning disability has been exacerbated by the actions of the offender (for example by the **voluntary** abuse of drugs or alcohol or by **voluntarily** failing to follow medical advice);
 - in considering the extent to which the offender’s actions were voluntary, the extent to which a mental disorder or learning disability has an impact on the offender’s ability to exercise self-control or to engage with medical services will be a relevant consideration.
2. any effect of the mental disorder or learning disability on the impact of the sentence on the offender; a mental disorder or learning disability may make it more difficult for the offender to cope with custody or comply with a community order.

Short description:

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

More information:

Where offending is driven by or closely associated with drug or alcohol abuse (for example stealing to feed a habit, or committing acts of disorder or violence whilst drunk) a commitment to address the underlying issue may justify a reduction in sentence. This will be particularly relevant where the court is considering whether to impose a sentence that focuses on rehabilitation.

Similarly, a commitment to address other underlying issues that may influence the offender's behaviour may justify the imposition of a sentence that focusses on rehabilitation.

The court will be assisted by a PSR in making this assessment.

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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	Proposed	SGC	
	Aggravating	Factors indicating higher culpability	Factors indicating a more than usually serious degree of harm
	<i>Statutory aggravating</i>		
1.	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	Previous conviction(s), particularly where a pattern of repeat offending is disclosed	
2.	Offence committed whilst on bail	Offence committed whilst on bail for other offences	
3.	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.	Offence was racially or religiously aggravated Offence motivated by or demonstrating hostility to the victim based on his or her sexual orientation (or presumed sexual orientation) Offence motivated by or demonstrating hostility to the victim based on his or her disability (or presumed disability)	
	<i>Other aggravating</i>		
4.		Failure to respond to previous sentences	
5.	Commission of offence whilst under the influence of alcohol or drugs	Commission of an offence whilst under the influence of alcohol or drugs	

	Proposed	SGC	
	Aggravating	Factors indicating higher culpability	Factors indicating a more than usually serious degree of harm
6.	Offence was committed as part of a group or gang	Offenders operating in groups or gangs	
7.	Offence involved use or threat of use of a weapon	Use of a weapon to frighten or injure victim	
8.	Gratuitous degradation of victim / maximising distress to victim		Additional degradation of the victim (e.g. taking photographs of victim as part of a sexual offence)
9.		An intention to commit more serious harm than resulted from the offence	
10.		Deliberate and gratuitous violence or damage to property, over and above what is needed to carry out the offence	
11.	Planning of an offence	Planning of an offence	
12.	Commission of the offence for financial gain	Commission of the offence for financial gain (where this is not inherent in the offence itself)	
13.	High level of profit from the offence	High level of profit from the offence	
14.		'Professional' offending	

	Proposed	SGC	
	Aggravating	Factors indicating higher culpability	Factors indicating a more than usually serious degree of harm
15.	Failure to respond to warnings or concerns expressed by others about the offender's behaviour	Failure to respond to warnings or concerns expressed by others about the offender's behaviour	
16.	Vulnerable victim	Deliberate targeting of vulnerable victim(s)	Victim is particularly vulnerable
17.	Victim was providing a public service or performing a public duty at the time of the offence		Offence is committed against those working in the public sector or providing a service to the public
18.		Offence motivated by hostility towards a minority group, or a member or members of it	
19.	Other(s) put at risk of harm by the offending		
20.			Multiple victims
21.			An especially serious physical or psychological effect on the victim, even if unintended
22.			A sustained assault or repeated assaults on the same victim

	Proposed	SGC	
	Aggravating	Factors indicating higher culpability	Factors indicating a more than usually serious degree of harm
23.			In property offences, high value (including sentimental value) of property to the victim, or substantial consequential loss (e.g. where the theft of equipment causes serious disruption to a victim's life or business)
24.	Offence committed in the presence of others (especially children)		Presence of others e.g. relatives, especially children or partner of the victim
25.	Actions after the event (including but not limited to attempts to cover up/ conceal evidence)	An attempt to conceal or dispose of evidence	
26.	Blame wrongly placed on other(s)		
27.	Offence committed on licence or post sentence supervision or while subject to court order(s)	Offence committed whilst on licence	
28.	Offence committed in custody		
29.	Offence committed in a domestic context		
30.	Abuse of trust or dominant position	Abuse of power Abuse of a position of trust	

	Proposed	SGC	
	Aggravating	Factors indicating higher culpability	Factors indicating a more than usually serious degree of harm
31.	Location and/or timing of offence		Location of the offence (for example, in an isolated place)
32.	Established evidence of community/ wider impact		
33.	Prevalence		Prevalence
34.	Offences taken into consideration		

	Proposed	SGC	
	Mitigating	Factors indicating significantly lower culpability	Personal mitigation
35.	No previous convictions or no relevant/recent convictions		
36.	Good character and/or exemplary conduct		
37.	Remorse		Remorse
38.	Self-reporting		
39.	Cooperation with the investigation/ early admissions		Admissions to police in interview Ready co-operation with the authorities

	Proposed	SGC	
	Mitigating	Factors indicating significantly lower culpability	Personal mitigation
40.	Little or no planning		
41.	The offender was in a lesser or subordinate role if acting with others / performed limited role under direction		The fact that the offender played only a minor role in the offence
42.	Little or no financial gain		
43.	Involved through coercion, intimidation or exploitation		
44.	Limited awareness or understanding of the offence		
45.	Delay since apprehension		
46.	Activity originally legitimate		
47.	Age and/or lack of maturity		Youth or age where it affects the responsibility of the individual defendant
48.	Sole or primary carer for dependent relatives		
49.	Physical disability or serious medical conditions requiring urgent, intensive or long-term treatment		

	Proposed	SGC	
	Mitigating	Factors indicating significantly lower culpability	Personal mitigation
50.	Mental disorder or learning disability		Mental illness or disability
51.	Determination and /or demonstration of steps having been taken to address addiction or offending behaviour		
52.		A greater degree of provocation than normally expected	

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Generic sentencing guideline for use where there is no offence-specific guideline

Consultation

June 2018

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**Generic Sentencing
Guideline for use where
there is no offence-specific
guideline**
Consultation

Published on XX June 2018

The consultation will end on XX September 2018

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 XX June 2018 to
- Enquiries (including requests for the paper in an alternative format) to:** Office of the Sentencing Council
Royal Courts of Justice
(full address as below)
Tel: 020 7071 5793
Email: info@sentencingcouncil.gov.uk
- How to respond:** Please send your response by [date] to:
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DX: 44450 RCJ/Strand
Email: consultation@sentencingcouncil.gov.uk
- Additional ways to feed in your views:** This consultation exercise is accompanied by a resource assessment, and an online questionnaire which can be found at:
www.sentencingcouncil.org.uk
A series of consultation meetings is also taking place. For more 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. PLEASE NOTE – We will disregard automatic confidentiality statements generated by an IT system.
In addition, responses may be shared with the Justice Committee of the House of Commons.

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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 to allow consultation on the sentencing of offenders following conviction.

Background

The Sentencing Council's predecessor body, the Sentencing Guidelines Council, published its Overarching Principles: Seriousness guideline in 2004.¹ It remains in force although parts of it have been superseded.

The SGC Seriousness guideline sets out the statutory provisions governing the five purposes of sentencing and the assessment of culpability and harm as set out in the Criminal Justice Act 2003. The SGC guideline then goes on to give guidance on the assessment of harm and culpability and to list factors that indicate an increase or decrease the harm or culpability.

It then gives guidance on reductions for a guilty plea (which has been superseded by the *Reduction in Sentence for a Guilty Plea* definitive guideline), the custody and community sentence thresholds (superseded by the *Imposition of Community and Custodial Sentences* definitive guideline) and prevalence (which is still current).

Why is the Council producing a generic guideline?

The Council aims to replace all SGC guidelines by 2020, so that all guidelines are in the Sentencing Council format and are up-to-date. In 2018 the Council will be moving to digital guidelines for use in the Crown Court (magistrates' courts already use digital guidelines) and this presents an opportunity to embed additional information into guidelines.

The Council has produced offence-specific guidelines for most of the high volume criminal offences sentenced by the courts in England and Wales and is currently developing guidelines for the remaining high volume offences. There remain, however, many offences which are not yet covered by definitive or draft offence-specific guidelines. These include but are not limited to:

Blackmail	Kidnap and false imprisonment
Child abduction	Landlord, HMO offences
Cybercrime - hacking	Modern slavery
Data protection offences	Offences against vulnerable adults
Female genital mutilation	Offences committed in custody
Fire regulation offences	Perverting the course of justice / perjury
Forgery / counterfeiting	Planning offences
Immigration offences	Wildlife offences

¹ https://www.sentencingcouncil.org.uk/wp-content/uploads/web_seriousness_guideline.pdf

In addition the Council has produced overarching guidance on many of the key issues of sentencing (including totality, sentencing children and young people, domestic abuse, reductions in sentence of a guilty plea and imposition of custodial and community sentences) and the Council has commenced work on developing overarching guidance on mental health and learning disabilities in sentencing. There are other overarching issues about which the Council has been asked to provide guidance, such as youth and immaturity and the significance of previous convictions.

The Council has therefore taken this opportunity to:

1. replace the SGC Seriousness guideline;
2. provide a guideline for the sentencing of offences not covered by an offence specific guideline;
3. embed in that guideline, overarching guidance on sentencing issues.

Guidance for factors in offence-specific guidelines

The introduction of digital guidelines will also allow the Council to provide additional guidance on the factors in existing and new offence-specific guidelines. The Council will consult separately on this in late 2019/early 2020.

What is the Council consulting about?

The Council has produced this consultation paper in order to seek the views of people interested in criminal sentencing.

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

- the principal factors that make offences more or less serious;
- additional factors which should influence the sentence;
- the applicability of the guideline to a wide range of offences;
- the clarity and accessibility of the guideline; and
- anything else that you think should be considered.

The Council recognises that when all the additional information is taken into account this generic guideline is longer than most offence-specific guidelines and that not all aspects of the guideline will be of interest to all respondents. The Council welcomes responses to all or part of this consultation.

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

What else is happening as part of the consultation process?

This is a 12 week public consultation. During the consultation period, the Council will host a number of consultation meetings to seek views from interested organisations as well as with sentencers. Once the consultation exercise is over and the results considered, a final guideline will be published and used by all adult courts.

The Council has also produced a resource assessment and a statistical bulletin detailing current sentencing practice. These documents can be found on the Sentencing Council's website: www.sentencingcouncil.org.uk

Q1: *What is your name?*

Q2: *What is your email address?*

Q3: *What is your organisation?*

Q4: *Which (if any) criminal offences are of particular interest to you in the context of this guideline?*

Developing the guideline

General considerations

This generic guideline is for use when sentencing offences for which there is no offence-specific guideline. As such it is designed to provide guidance for sentencing a very wide range of offences with very different characteristics and very different maximum sentences. Of necessity, therefore, the guideline cannot specify sentence levels.

The Council is aware of the difficulty faced by courts when sentencing offenders for offences that are only rarely seen, and this is particularly the case for offences most commonly sentenced in magistrates' courts where there are no judgments of the Court of Appeal (Criminal Division) to assist.

The guideline aims to provide a framework for sentencing cases and to provide additional context to factors to assist courts in arriving at a just and proportional sentence.

The guideline inevitably leaves very wide discretion to the sentencer but aims to ensure that all relevant factors are considered and given appropriate weight in arriving at the final sentence.

In developing the guideline the Council has had regard to:

- submissions from parties seeking guidelines for specific offences;
- decisions of the Court of Appeal (Criminal Division) on the application of sentencing factors;
- the SGC Seriousness guideline;
- research with sentencers on offence-specific and overarching guidelines;
- the report on how the Sentencing Council can best exercise its functions by Professor Sir Anthony Bottoms (the Review);²

Digital guidelines

The basic structure of the generic guideline is very similar to all Sentencing Council offence guidelines, but this guideline will take advantage of the digital format by providing additional information about the factors to be accessed from within the guideline.

A text version of the draft guideline is available here [link] but in order to see how the guideline will operate in practice it is recommended that you open the digital draft guideline in a separate window [link]

If you have any difficulty accessing the draft guideline please contact us [link].

Q5: Have you been able to access the digital guideline to respond to this consultation?

² THE SENTENCING COUNCIL IN 2017, A Report on Research to Advise on how the Sentencing Council can best Exercise its Statutory Functions [link]

The proposals in detail

Applicability of guideline

The guideline applies to sentencing adults and organisations only. For sentencing children and young people refer to the definitive guideline: *Overarching Principles – Sentencing Children and Young People*.

Step one

The first step is to arrive at a provisional sentence. The guideline sets out the three main sources of information which may assist a sentencer to identify an appropriate sentence (and reminds sentencers not to have regard to draft sentencing guidelines). Sentencers are then directed to assess the seriousness of the offence by considering culpability and harm, which is in accordance with section 143(1) of the Criminal Justice Act 2003 which provides:

‘In considering the seriousness of any offence, the court must consider the offender’s culpability in committing the offence and any harm which the offence caused, was intended to cause or might foreseeably have caused.’

The guideline provides additional information on the assessment of culpability and of harm which is accessed by clicking on the relevant words in the digital version (see further below).

The guideline also refers to sentencing offences for which a fixed penalty notice was available and provides additional information on the approach to be taken in such cases.

Finally, at step one the guideline directs sentencers to have regard to the five purposes of sentencing which are taken from section 142(1) of the Criminal Justice Act 2003 which provides:

‘Any court dealing with an offender in respect of his offence must have regard to the following purposes of sentencing-

- (a) the punishment of offenders,
- (b) the reduction of crime (including its reduction by deterrence),
- (c) the reform and rehabilitation of offenders,
- (d) the protection of the public, and
- (e) the making of reparation by offenders to persons affected by their offences.’

Additional information at step one

By clicking on ‘harm’, ‘culpability’ or ‘penalty notices’ the user will access further information on these topics. Views are sought on the clarity, relevance and helpfulness of the information.

Q6: What are your views on the general guidance given at step one?

Q7: What are your views on the additional information on harm and culpability?

Q8: What are your views on the additional information on fixed penalty notices (if relevant to you)?

Step two

In offence-specific guidelines, step two would include a sentence table with starting points and category ranges. In this generic guideline no such table can be provided. However, in most other respects the generic guideline follows the same format as offence-specific guidelines at step two. The sentencer is required to consider a non-exhaustive list of aggravating and mitigating factors and determine whether the sentence arrived at thus far should be adjusted.

The digital guideline will provide links to information on community and custodial sentences (taken from the *Imposition of community and custodial sentences* definitive guideline) and on fine bands.

Importantly the sentencer is reminded not to double count when applying the factors at step two.

Statutory aggravating factors

These factors are set out in statute and sentencers are obliged to apply them in relevant cases. The generic guideline provides additional information for each factor including reference to the statutory provisions. In the case of previous convictions, evidence shows that this factor can be very influential in sentencing and the Council wants to ensure that sentencers take all relevant matters into consideration in determining the effect of previous convictions on sentences.

Q9: What are your views on the additional information provided for the statutory aggravating factors?

Other aggravating factors

The Council has listed all of the factors that seem likely to be relevant to a range of different offending, but the list is not exhaustive and many of the factors will not be relevant to any particular case. The digital guideline will provide additional information on each factor to assist sentencers in applying the factor consistently and fairly.

The first two factors in the list:

- Commission of offence whilst under the influence of alcohol or drugs
- Offence was committed as part of a group or gang

are commonly used in guidelines and may be applicable to a wide range of offences. The information is designed to ensure these factors are only used to increase the sentence when they are relevant to the offending and indicate increased harm and/or culpability. Importantly, sentencers are referred to the guidance on the mitigating factor relating to age and immaturity when considering the significance of group offending in young adults. This is because immature offenders are more likely to take risks and behave in an impulsive manner when in company with their peers. The Council considers that it is important that sentencers take account of all the relevant information to ensure fair treatment of offenders.

The next factor ‘offence involved the use or threat of a weapon’ is relevant to many offences of violence.

Responses to consultations on offence-specific guidelines have highlighted that sentencers would welcome guidance on how these factors should be applied.

‘Planning of an offence’ can be a relevant factor in many types of offending and may have already been taken into account at step one; the warning against double counting will be relevant to this factor.

Q10: What are your views on the above four factors and the additional information provided in the guideline?

Other aggravating factors (continued)

- Commission of the offence for financial gain
- High level of profit from the offence

These factors are related and the offences to which they may be relevant will include (but are not limited to) regulatory offences and some wildlife offences. They may apply to offences committed by individuals or by organisations. Stakeholders have made representations to the Council about the need for guidance in this area to ensure that financial penalties in particular are commensurate with the seriousness of the offending and represent an effective deterrent against future offending. The information provided aims to give courts the framework to ensure that any financial sanction imposed is appropriate to the offending.

Q11: What are your views on the above two factors relating to financial gain and the additional information provided in the guideline?

Other aggravating factors (continued)

- 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)

The above aggravating factors all relate to victims and the harm caused by the offending and/or the culpability of the offender.

The issue of when it is appropriate to aggravate an offence for abuse of trust in the context of sexual offending has been considered by the Court of Appeal (Criminal Division).³ The additional information is designed to provide some more general guidance on this issue.

Evidence from responses to previous consultations and from research with sentencers suggests that information about how vulnerability should be interpreted would be useful.

The factor relating to those working in the public sector may need to be amended if legislation is passed relating specifically to emergency workers as victims, but the Council

³ Case reference

intends to continue to recognise the need for additional protection for all those whose public facing roles expose them to the possibility of harm.

Q12: What are your views on the above six factors relating to victims and the additional information provided in the guideline?

Other aggravating factors (continued)

The following two factors relate to the behaviour of the offender after the offence has been committed:

- Actions after the event including but not limited to attempts to cover up/ conceal evidence
- Blame wrongly placed on other(s)

The additional information in relation to the 'blame' factor makes it clear that it does not apply where an offender simply fails to accept responsibility for the offence. The factor should not be interpreted in any way that undermines the presumption of innocence.

Q13: What are your views on the above two factors relating to behaviour after the offence and the additional information provided in the guideline?

Other aggravating factors (continued)

- Failure to respond to warnings or concerns expressed by others about the offender's behaviour

This factor has been included to reflect the fact that the culpability of the offender may be increased where warnings have been received but ignored. There are many factual scenarios to which this factor could apply. One is where an offender ignores warnings that his acts or omissions may give rise to an offence in a regulatory context, for example a warning that premises are not compliant with fire regulations. Another is where an offender is warned shortly before committing an offence that it is dangerous and/or unlawful, for example a member of a jury warned not to research a defendant on the internet. Rather than give examples the guideline provides guidance of general application.

- Offence committed on licence or post sentence supervision or while subject to court order(s)
- Offence committed in custody

The additional information for these factors sets out the way in which they can make an offence more serious but also reminds sentencers not to double count matters already taken into account in considering previous convictions. The 'offence committed in custody' factor includes a link to the Totality guideline.

- Offences taken into consideration

The additional information for this factor is an extract from the *Offences taken into consideration definitive guideline*.

Q14: What are your views on the above four factors and the additional information provided in the guideline?

Other aggravating factors (continued)

- Offence committed in a domestic context
- Offence committed in a terrorist context
- Location and/or timing of offence

The first two factors above, simply refer users to other relevant guidelines which they will be able to access digitally. The third factor is one that is used in several offence-specific guidelines. The Council considers that there is a danger that without further explanation 'location' and 'timing' may be applied too widely, but that there are situations to which factor would legitimately apply; the additional information aims to clarify where it is appropriate to apply the factor.

Q15: What are your views on the above three factors and in particular the additional information on timing and location provided in the guideline?

Other aggravating factors (continued)

- Established evidence of community/ wider impact
- Prevalence

These two factors may be linked and the additional information seeks to clarify when they may properly be applied.

Q16: What are your views on the above two factors and the additional information provided in the guideline?

Q17: Are there any other aggravating factors that you think should be included in the generic guideline?

Factors reducing seriousness or reflecting personal mitigation

As with the aggravating factors, the Council has listed all of the mitigating factors that seem likely to be relevant to a range of different offending, but the list is not exhaustive and many of the factors will not be relevant to any particular case. The digital guideline will provide additional information on each factor to assist sentencers in applying the factor consistently and fairly.

The Council did consider a recommendation in the Review by Professor Bottoms to separate out personal mitigation from offence mitigation. The Council concluded there was not always a clear distinction between the two types of mitigation and that some mitigating factors will apply to both.

- No previous convictions or no relevant/recent convictions
- Good character and/or exemplary conduct

The first two factors are common to all sentencing guidelines. Although the term 'good character' is often used to mean no previous convictions, in the context of sentencing guidelines the factors are different and the additional information sets out the relevance of each to sentencing. The additional information on good character contains the caveat that good character does not always mitigate.

Q18: What are your views on the additional information on the mitigating factors relating to no previous convictions and good character?

- Remorse
- Self-reporting
- Co-operation with the investigation/ early admissions

Remorse is a factor common to all Sentencing Council guidelines and is frequently referenced in transcripts of sentencing remarks. The other two factors above are different but related (and may be evidence of genuine remorse). The additional information makes it clear that these are to be considered separately from the reduction in sentence for any guilty plea.

Q19: What are your views on the additional information on the three mitigating factors above?

To be continued.....

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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