

## Statutory aggravating factors

### SA1:

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. If a custodial sentence is it should be proportionate and 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.

**SA2:**

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.

**SA3:**

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.

**A1:**

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.

**A2:**

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.

**A3:**

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.

**A4:**

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

**A5:**

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.**

**A6:**

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.
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    - avoided costs;
    - operating savings;
    - any gain made as a direct result of the offence.
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  - 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.**
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**A7:**

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.
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**A8:**

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).

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**A9:**

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.
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**A10:**

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.
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**A11:**

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.
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**A12:**

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.
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**A13:**

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.

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**A14:**

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.
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**A15:**

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.
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**A16:**

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.
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**A17:**

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](#) for detailed guidance.
  - Care should be taken to avoid double counting matters taken into account when considering previous convictions.
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**A18:**

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

**A19:**

Offence committed in a domestic context

**More information:**

Refer to the [Overarching Principles: Domestic Abuse Definitive Guideline](#)

**A20:**

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](#)

**A21:**

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 context, 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.

**A22:**

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.

**A23:**

## 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 a 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 the sentence for such a factor in the particular case being sentenced.
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