

**Sentencing guidelines for the  
offence of sale of knives etc to  
persons under 18  
Consultation**

# **Sentencing guidelines for the offence of sale of knives etc to persons under 18**

## **Consultation**

Published on 1 June 2022

The consultation will close on 24 August 2022

# 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 1 June to 24 August 2022
- Enquiries (including requests for the paper in an alternative format) to:** Office of the Sentencing Council  
Tel: 020 7071 5793  
Email: [info@sentencingcouncil.gov.uk](mailto:info@sentencingcouncil.gov.uk)
- How to respond:** Please send your response by 24 August 2022 to:  
Ruth Pope  
  
Email: [consultation@sentencingcouncil.gov.uk](mailto: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](http://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](http://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 which courts in England and Wales must follow when passing a sentence. The Council consults on its proposed guidelines before they come into force and makes changes to the guidelines as a result of consultations.

## What is this consultation about?

The Sentencing Council proposes to issue two guidelines for the offence of the sale of knives etc to persons under 18 contrary to section 141A of the Criminal Justice Act 1988; one for sentencing individuals and one for sentencing organisations.

## Background

In 2020 the Council received a submission on behalf of the London Borough of Barking and Dagenham regarding the need for a sentencing guideline for the offence of selling knives to persons under the age of 18. The submission argued that sentences being passed for larger organisations did not adequately reflect the seriousness of the offence and the means of the organisation. The Council agreed to add this to the list of future guidelines to be developed when resources were available.

The Council considered whether to extend the scope of the project to include other offences relating to providing goods and services which are subject to age restrictions. The volumes of cases sentenced for all age restricted sale offences are low. In the five year period 2016 to 2020 only offences relating to the sale of alcohol, the sale of knives and the sale of tobacco products resulted in more than 10 offenders sentenced in any year.

There is already a Sentencing Council guideline which covers the offence of [selling alcohol to children](#) and the Council concluded that, given the particular concern regarding the sale of knives to children, guidelines for this offence should be prioritised.

This offence is prosecuted by Trading Standards departments within local authorities and almost all prosecutions are as a result of test purchases. This means that the volume of prosecutions is very closely linked to the resources that Trading Standards departments are able to devote to this aspect of their work. The Council has drawn on the expertise of the National Trading Standards and the Association of Chief Trading Standards Officers (ACTSO) in developing the guidelines.

The offence of selling knives etc to persons under the age of 18 is a summary only offence; it carries a maximum of six months' imprisonment (or, in the case of an organisation, an unlimited fine) and can only be dealt with in magistrates' courts. It is a strict liability offence (there is no requirement to show intention or knowledge) subject to a defence of proving that all reasonable precautions were taken and all due diligence was exercised to avoid the offence.

The legislation states:

***Criminal Justice Act 1988 141A.— Sale of knives and certain articles with blade or point to persons under eighteen.***

*(1) Any person who sells to a person under the age of eighteen years an article to which this section applies shall be guilty of an offence and liable on **summary conviction** to imprisonment for a term not exceeding **six months**, or a fine not exceeding level 5 on the standard scale, or both.*

*(2) Subject to subsection (3) below, this section applies to—*

- (a) any knife, knife blade or razor blade,*
- (b) any axe, and*
- (c) any other article which has a blade or which is sharply pointed and which is made or adapted for use for causing injury to the person.*

*(3) This section does not apply to any article described in—*

- (a) section 1 of the Restriction of Offensive Weapons Act 1959.*
- (b) an order made under section 141(2) of this Act, or*
- (c) an order made by the Secretary of State under this section.*

*(4) It shall be a defence for a person charged with an offence under subsection (1) above to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.*

*(5) The power to make an order under this section shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.*

## **Responding to the consultation**

This consultation paper has been produced in order to seek views from as many people as possible interested in the sentencing of this offence.

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

- the principal factors that make the offence in the draft guidelines more or less serious;
- the additional factors that should influence the sentence; the types and severity of sentence that should be passed;
- whether there are any issues relating to disparity of sentencing and/or broader matters relating to equality and diversity that the guidelines could and should address; and
- anything else you think should be considered.

We would like to hear from anyone who uses sentencing guidelines in their work or who has an interest in sentencing. We would also like to hear from individuals and organisations representing anyone who could be affected by the proposals including:

- victims of crime and their families;
- defendants and their families;



- those under probation supervision or youth offending teams/supervision;
- those with protected characteristics: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

It is important to note that the Council is consulting on sentencing for this offence and not on the legislation above. The legislation is a matter for Parliament and is, therefore, outside the scope of this exercise.

During the 12 week consultation period, the Council will also hold meetings with sentencers and key stakeholders to discuss the draft guidelines. Following the consultation, once the results of the consultation and the discussions have been considered, the final guidelines will be published and used by all courts when sentencing this offence.

Alongside this consultation paper, the Council has produced a statistical bulletin and data tables showing current sentencing practice for this offence and a resource assessment. These can be found on the Sentencing Council's website:

<https://www.sentencingcouncil.org.uk/consultations/>

In the following sections the proposed guidelines are outlined in detail and you will be asked to give your views. You can give your views by answering some or all of the questions below either by email to [consultation@sentencingcouncil.gov.uk](mailto:consultation@sentencingcouncil.gov.uk) or by using the online questionnaire: <https://consult.justice.gov.uk/sentencing-council/sale-of-knives-etc-to-persons-under-18>

***Question 1: What is your name?***

***Question 2: What is your email address?***

***Question 3: What is your organisation?***

# Guideline for individuals

## Developing the guideline

The draft guideline can be seen at the following link:

<https://www.sentencingcouncil.org.uk/offences/magistrates-court/item/sale-of-knives-etc-to-persons-under-18-individuals-for-consultation-only>

The guideline follows the usual format for Sentencing Council guidelines, with the principal factors that determine seriousness considered at step one, leading to a sentence starting point at step two which is then adjusted for aggravating and mitigating factors. For this offence at step three there is an additional step – adjustment of fine, and steps four to eight deal with matters such as any reduction for a guilty plea, adjustment for the totality of offences and ancillary orders.

## How the offence is prosecuted

As mentioned above, the offence of selling knives to children is prosecuted by the Trading Standards departments of local authorities. It is used to prosecute retailers who fail to ensure that the necessary safeguards are in place to prevent children purchasing knives. In practice prosecutions result from test purchases where a child, under the supervision of Trading Standards officers, attempts to purchase an age restricted item. If the retailer allows the sale to go ahead, they are liable to be prosecuted.

In these situations, the purchase will typically be of a single knife or small pack of knives. When developing the guidelines, the Council noted that the offence could also, at least theoretically, be used to prosecute in cases of the deliberate sale of knives to children – perhaps through social media and/or for the sale of knives in large quantities. Consideration was given to expanding the scope of the guideline to cater for such cases, but the Council decided that the guideline should focus on the types of case that actually come before the courts. To make the scope of the guideline clear to users the following wording is included at the beginning of the guideline:

Note: This guideline applies to the unlawful sale in a single transaction of a small quantity of knives etc (whether in-store or online) by retailers or those employed by retailers. It does not apply to cases of a more serious nature such as those involving large quantities of knives or the deliberate or reckless marketing of knives to children.

Individuals prosecuted for this offence will normally be the owners or managers of small businesses with responsibility for ensuring that safeguards are in place.

### *Question 4: Is the wording relating to the scope of the guideline clear?*

## Step one

### Step one – Culpability

Trading Standards provide retailers with advice and guidance on the appropriate safeguards to prevent underage sales. Practice varies between different local authority areas but some will warn retailers 90 days in advance that they will be subject to test

purchases. Prior to these taking place, retailers may be visited and given advice as to the adequacy of the measures they have in place and may be offered training. Online retailers may also be warned before test purchasing takes place. In London, retailers may be invited to sign up to a [responsible retailer agreement](#). If a test purchase results in an underage sale, a prosecution will not always follow – consideration will be given to factors such as past history and willingness to rectify procedures and improve training.

The proposed culpability factors are designed to apply to both in-store and online sales and to guide the sentencer as to what the relevant standards are. This is an offence that does not come before the courts very often and the Council considered that sentencers would be helped by a guideline that sets out the features of each level of culpability.

## Culpability

### A – High culpability

- Offender in a position of responsibility failed to put in place standard measures to prevent underage sales -
  - For in-store sales standard measures would normally include: identifying restricted products, clear signage, age verification checks/ Challenge 21 or Challenge 25 policy, staff training, maintaining refusals log, till prompts
  - For online sales standard measures would normally include: identifying restricted products, use of a reliable online age verification tool and/or collect in-store policy with checks on collection.
- Offender in a position of responsibility failed to act on concerns raised by employees or others
- Offender falsified documents
- Offender failed to make appropriate changes following advice and/or prior incident(s)
- Offender disregarded clear measures put in place to prevent underage sales

### B – Medium culpability

- Offender in a position of responsibility put in place standard measures but these were not sufficiently adhered to or implemented
- Offender failed to fully implement measures put in place to prevent underage sales
- Other cases where the offender's culpability falls between the factors as described in A and C

### C – Lesser culpability

- Offender made significant efforts to prevent underage sales where not amounting to a defence

**Question 5: Do you have any comments on the culpability factors in the guideline for individuals?**

## Step one – Harm

Where a prosecution results from a test purchase, the child making the purchase does not go on to retain the item(s) and so in these cases there is no risk of harm resulting from that particular transaction. However, the harm associated with the offence is considered to be very serious. There is the risk of serious physical harm to purchasers and to others as well as the risk of wider social harms associated with the circulation of weapons amongst children. A child purchasing a knife is also at risk of prosecution for possession of the knife. In the case of an in-store purchase the young person could face immediate arrest for possession of a knife in a public place.

The Council considered whether there were factors that might point to greater harm in some situations, such as the age of the purchaser, the nature of the knife or the quantity sold. However, in reality, given the nature of the cases prosecuted there is no meaningful distinction in harm between cases. The Council therefore decided to have just one level of harm for both guidelines:

### HARM

The harm caused by this offence relates to the risks, both to themselves and to others as well as the wider community, associated with children and young people being in possession of knives. There is just one level of harm, as the same level of harm is risked by any such sale to a person aged under 18.

***Question 6: Do you have any comments on the treatment of harm in the guideline for individuals?***

## Step two

### Step two – sentence levels

In proposing the sentence levels for this offence, the Council has had regard to data on sentences passed taken from the Court Proceedings Database (CPD) maintained by the Ministry of Justice.

The majority of offences are punished by way of a fine. In the five year period 2016 to 2020, of around 70 adult offenders sentenced, 75 per cent were fined, 15 per cent received an absolute or conditional discharge, and 6 per cent were made subject to a community order. A further 3 per cent received a suspended sentence order and the remaining 1 per cent were 'Otherwise dealt with'. Fine levels for individuals in 2016 to 2020 ranged from £34 to £6,000 (the mean was £582 and the median £308). All of these sentences are after any reduction for a guilty plea.

Detailed sentencing statistics for the offence covered by the draft guideline have been published on the Sentencing Council website at the following link:

<https://www.sentencingcouncil.org.uk/research-and-resources/publications?s&cat=statistical-bulletin>

The proposed sentence levels have been set with a view to maintaining current sentencing practice in terms of the type of sentence passed, while allowing for an increase in the level of fines for the more serious cases to align with the guideline for organisations.

Bearing in mind the limited situations in which the offence is prosecuted and in order to avoid sentence inflation, the Council decided not to include a custodial sentence in the range. In addition, the Council wanted to avoid an unfair disparity between the type of sentence imposed on a small retailer operating as a sole trader (prosecuted as an individual) and a small retailer operating as a limited company (prosecuted as an organisation, where a fine is the only sentence available).

Fines should be considered in the context of step 3 – Adjustment of fine which is discussed further below.

| Culpability  |  |   |
|--|--|---|
| A  | B  | C   |
| <p><b>Starting point</b><br/>Medium level community order or Band E fine</p> <p><b>Category range</b><br/>Low level community order or Band D fine – High level community order or Band F fine</p> | <p><b>Starting point</b><br/>Low level community order or Band D fine</p> <p><b>Category range</b><br/>Band B fine – Medium level community order or Band E fine</p> | <p><b>Starting point</b><br/>Band A fine</p> <p><b>Category range</b><br/>Discharge – Band B fine</p> |

Information on fine bands is provided as a dropdown box in the digital guideline:

|                    | Starting point                 | Range                                |
|--------------------|--------------------------------|--------------------------------------|
| <b>Fine Band A</b> | 50% of relevant weekly income  | 25 – 75% of relevant weekly income   |
| <b>Fine Band B</b> | 100% of relevant weekly income | 75 – 125% of relevant weekly income  |
| <b>Fine Band C</b> | 150% of relevant weekly income | 125 – 175% of relevant weekly income |
| <b>Fine Band D</b> | 250% of relevant weekly income | 200 – 300% of relevant weekly income |
| <b>Fine Band E</b> | 400% of relevant weekly income | 300 – 500% of relevant weekly income |
| <b>Fine Band F</b> | 600% of relevant weekly income | 500 – 700% of relevant weekly income |

**Question 7: Do you have any comments on the sentence levels in the guideline for individuals?**

### Step two – aggravating and mitigating factors

Having reached a starting point, the next stage is to consider adjusting the sentence for aggravating and/or mitigating factors.

The court should then consider adjustment for any aggravating or mitigating factors. The following is a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the sentence arrived at so far.

### Factors increasing seriousness

#### Statutory aggravating factors:

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

**Other aggravating factors:**

- Obstruction of justice

The limited number of aggravating factors proposed reflects the narrow range of offending that is captured by this offence and fact that most relevant factors are covered in culpability factors. Sentencers are not restricted to the items listed, if other relevant factors are present, these can be taken into account.

**Factors reducing seriousness or reflecting personal mitigation**

- No previous convictions or no relevant/recent convictions
- Evidence of steps taken voluntarily to prevent re-occurrence
- High level of co-operation with the investigation and acceptance of responsibility
- Good record of compliance with Trading Standards
- Serious medical condition requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives

The proposed mitigating factors listed above are largely those that appear in most Sentencing Council guidelines and are non-exhaustive. The three factors that are particularly relevant to this offence are:

- Evidence of steps taken voluntarily to prevent re-occurrence
- High level of co-operation with the investigation and acceptance of responsibility
- Good record of compliance with Trading Standards

***Question 8: Do you have any comments on the proposed aggravating and mitigating factors in the guideline for individuals?***

**Step three – Adjustment of fine**

As noted above, the most common sentence for this offence is a fine. Although offenders are being prosecuted as individuals, the offence will have been committed in the course of running a business and it is therefore important that any fine reflects the commercial nature of the offending. The Council, therefore, proposes to include a step where the court ‘steps back’ and reviews any financial element of the sentence.

Where the sentence is or includes a fine, the court should consider whether there are any further factors which indicate an adjustment in the level of the fine including outside the category range. The court should ‘step back’ and consider the overall effect of its orders.

The fine ought to achieve:

- the removal of all gain (including through the avoidance of costs)
- appropriate punishment, and

- deterrence

The fine may be adjusted to ensure that these objectives are met in a fair way. The court should consider any further factors relevant to the setting of the level of the fine to ensure that the fine is proportionate, having regard to the financial position of the offender and the seriousness of the offence.

See the Fines dropdown above for more information

The fines dropdown, which is common to all guidelines that include a fine in the range of sentences, sets out the fine bands (see above) and says:

- The court should determine the appropriate level of fine in accordance with this guideline and [section 125 of the Sentencing Code](#), which requires that the fine must reflect the seriousness of the offence and that the court must take into account the financial circumstances of the offender.
- 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.
- 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.**
- In considering economic benefit, the court should avoid double recovery.
- Where the means of the offender are limited, priority should be given to compensation (where applicable) over payment of any other financial penalty.
- 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. The court should ensure that the effect of the fine (particularly if it will result in closure of the business) is proportionate to the gravity of the offence.
- Obtaining financial information: It is for the offender to disclose to the court such data relevant to their financial position as will enable it to assess what they can reasonably afford to pay. If necessary, the court may compel the disclosure of an individual offender's financial circumstances pursuant to [section 35 of the Sentencing Code](#). In the absence of such disclosure, or where the court is not satisfied that it has been given sufficient reliable information, the court will be entitled to draw reasonable inferences as to the offender's means from evidence it has heard and from all the circumstances of the case. In setting a fine, the court may conclude that the offender is able to pay any fine imposed unless the offender has supplied financial information to the contrary.

***Question 9: Do you have any comments on the proposed adjustment of fine step in the guideline for individuals?***

**Steps four to eight**

These are largely standard steps in Sentencing Council guidelines. Step seven contains information and guidance on compensation and confiscation. These are available but in practice are rarely applied for or imposed for this offence. The Council considered that despite the fact that confiscation was unlikely to apply, it was useful to include the relevant information including the fact that confiscation must be dealt with before any fine.

**Step 7 – Compensation, confiscation and ancillary orders**

In all cases, the court should consider whether to make [compensation](#) and/or other ancillary orders. Where the offence has resulted in personal injury, loss or damage the court must give reasons if it decides not to order compensation ([Sentencing Code, s.55](#)).

**Confiscation orders** under the Proceeds of Crime Act 2002 may only be made by the Crown Court. The Crown Court must proceed with a view to making a **confiscation order** if it is asked to do so by the prosecutor or if the Crown Court believes it is appropriate for it to do so.

Where, following conviction in a magistrates' court, the prosecutor applies for the offender to be committed to the Crown Court with a view to a confiscation order being considered, the magistrates' court must commit the offender to the Crown Court to be sentenced there (section 70 of the Proceeds of Crime Act 2002). This applies to summary only and either-way offences.

Confiscation must be dealt with before, and taken into account when assessing, any other fine or financial order (except compensation). (See Proceeds of Crime Act 2002 sections 6 and 13)

***Question 10: Do you have any comments on the proposed steps four to eight in the guideline for individuals?***



# Guideline for organisations

## Developing the guideline

The draft guideline can be seen at the following link:

<https://www.sentencingcouncil.org.uk/offences/magistrates-court/item/sale-of-knives-etc-to-persons-under-eighteen-organisations-for-consultation-only>

An organisation that is a legal entity can be prosecuted for this offence. An organisation cannot be sent to prison or given a community order and therefore the only sentences available are a fine or a discharge. The statutory maximum fine is unlimited.

As with the guideline for individuals, this guideline follows the usual format for Sentencing Council guidelines, with the principal factors that determine seriousness considered at step one, leading to a sentence starting point at step two which is then adjusted for aggravating and mitigating factors. At step three there is an additional step – adjustment of fine, and steps four to eight deal with matters such as any reduction for a guilty plea, adjustment for the totality of offences and ancillary orders.

Wording setting out the scope of the offending covered by the guideline is also at the beginning of this guideline:

Note: This guideline applies to the unlawful sale in a single transaction of a small quantity of knives etc (whether in-store or online) by retailers. It does not apply to cases of a more serious nature such as those involving large quantities of knives or the deliberate or reckless marketing of knives to children.

## Step one

### Step one – Culpability

The proposed culpability factors are similar to those in the guideline for individuals.

#### Culpability

##### A – High culpability

- Offender failed to put in place standard measures to prevent underage sales -
  - For in store sales standard measures would normally include:
    - identifying restricted products, clear signage, age verification checks/ Challenge 21 or Challenge 25 policy, staff training, maintaining refusals log, till prompts
    - For online sales standard measures would normally include:
      - identifying restricted products, use of a reliable online age verification tool and/or collect in-store policy with checks on collection.
- Offender failed to act on concerns raised by employees or others
- Falsification of documents
- Offender failed to make appropriate changes following advice and/or prior incident(s)

### **B – Medium culpability**

- Systems were in place but these were not sufficiently adhered to or implemented
- Other cases where the offender’s culpability falls between the factors as described in A and C

### **C – Lesser culpability**

- Offender made significant efforts to prevent underage sales where not amounting to a defence

## **Question 11: Do you have any comments on the culpability factors in the guideline for organisations?**

### **Step one – Harm**

As set out above there is only one level of harm for this offence.

#### **HARM**

The harm caused by this offence relates to the risks, both to themselves and to others as well as the wider community, associated with children and young people being in possession of knives. There is just one level of harm, as the same level of harm is risked by any such sale to a person aged under 18.

### **Step two**

#### **Step two – sentence levels**

In proposing the sentence levels for this organisations, the Council has had regard to data on sentences passed taken from the Court Proceedings Database (CPD) maintained by the Ministry of Justice and also further information from Trading Standards departments on some individual cases they have prosecuted.

The majority of these offences are punished by way of a fine. Of nearly 90 organisations sentenced in the five year period 2016 to 2020, 99 per cent were fined and 1 per cent were sentenced to a discharge (an organisation cannot be sentenced to custody or to a community order). In 2016 to 2020, the range of fine amounts was £150 to £200,000 (the mean was £10,264 and the median £2,500). All of these fine amounts are after any reduction for a guilty plea.

Detailed sentencing statistics for the offence covered by the draft guideline have been published on the Sentencing Council website at the following link:

<https://www.sentencingcouncil.org.uk/research-and-resources/publications?s&cat=statistical-bulletin>

The fine levels were set with reference to existing guidelines for organisations ([health & safety](#), [food safety](#), [environmental](#)). As with the existing guidelines which apply to organisations of widely varying sizes, the approach taken to sentence levels is to have four sentence tables: for micro, small, medium and large organisations.

The Council's intention in developing guidelines for this offence is to ensure that fines are proportionate, particularly in the case of larger companies, which may lead to increased fines in some cases.

Fines should be considered in the context of step 3 – Adjustment of fine which is discussed further below.

### Very large organisation

Where an offending organisation's turnover or equivalent very greatly exceeds the threshold for large organisations, it may be necessary to move outside the suggested range to achieve a proportionate sentence.

#### Large organisation - Turnover or equivalent: £50 million and over

| Culpability                                    |  |   |
|--|--|---|
| A  | B  | C   |
| <b>Starting point</b><br>£400,000              | <b>Starting point</b><br>£200,000            | <b>Starting point</b><br>£50,000            |
| <b>Category range</b><br>£200,000 – £1,000,000 | <b>Category range</b><br>£100,000 – £400,000 | <b>Category range</b><br>£12,000 – £100,000 |

#### Medium organisation - Turnover or equivalent: between £10 million and £50 million

| Culpability                                  |   |   |
|--|---|---|
| A  | B   | C   |
| <b>Starting point</b><br>£200,000            | <b>Starting point</b><br>£100,000           | <b>Starting point</b><br>£20,000          |
| <b>Category range</b><br>£100,000 – £400,000 | <b>Category range</b><br>£50,000 – £200,000 | <b>Category range</b><br>£5,000 – £50,000 |

#### Small organisation - Turnover or equivalent: between £2 million and £10 million

| Culpability                                 |  |   |
|---|--|---|
| A   | B  | C   |
| <b>Starting point</b><br>£50,000            | <b>Starting point</b><br>£25,000           | <b>Starting point</b><br>£6,000           |
| <b>Category range</b><br>£25,000 – £100,000 | <b>Category range</b><br>£12,000 – £50,000 | <b>Category range</b><br>£3,000 – £12,000 |

#### Micro organisation - Turnover or equivalent: not more than £2 million

| Culpability                               |   |  |
|---|---|--|
| A   | B   | C                                      |
| <b>Starting point</b><br>£12,500          | <b>Starting point</b><br>£6,000           | <b>Starting point</b><br>£1,500        |
| <b>Category range</b><br>£6,000 – £25,000 | <b>Category range</b><br>£3,000 – £12,000 | <b>Category range</b><br>£500 – £3,000 |

**Question 12: Do you have any comments on the sentence levels in the guideline for organisations?**

## Step two – aggravating and mitigating factors

Having reached a starting point, the next stage is to consider adjusting the sentence for aggravating and/or mitigating factors.

The court should then consider adjustment for any aggravating or mitigating factors. The following is a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the sentence arrived at so far.

### Factors increasing seriousness

#### Statutory aggravating factors:

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

#### Other aggravating factors:

- Obstruction of justice

As with the guideline for individuals, the limited number of aggravating factors reflects the fact that most relevant factors are covered in culpability factors and the relatively narrow range of offending that is captured by this offence. Sentencers are not restricted to the items listed, if other relevant factors are present, these can be taken into account.

### Factors reducing seriousness or reflecting mitigation

- No previous convictions or no relevant/recent convictions
- Evidence of steps taken voluntarily to prevent re-occurrence
- High level of co-operation with the investigation and acceptance of responsibility
- Good record of compliance with Trading Standards

The non-exhaustive mitigating factors listed above are the same as those proposed in the guideline for individuals but without those that apply solely to personal circumstances.

***Question 13: Do you have any comments on the proposed aggravating and mitigating factors in the guideline for organisations?***

### Step three – Adjustment of fine

At step two the court has arrived at a sentence based on the turnover of the organisation and the seriousness of the offence. The financial position of an organisation will depend on more than its turnover, and at step three the court is asked to look at the financial position and the seriousness of the offence in the round to ensure that the fine is proportionate.

Having arrived at a fine level, the court should consider whether there are any further factors which indicate an adjustment in the level of the fine including outside the category range. The court should 'step back' and consider the overall effect of its orders. The fine ought to achieve:

- the removal of all gain (including through the avoidance of costs)
- appropriate punishment, and
- deterrence

The fine may be adjusted to ensure that these objectives are met in a fair way. The court should consider any further factors relevant to the setting of the level of the fine to ensure that the fine is proportionate, having regard to the size and financial position of the offending organisation and the seriousness of the offence.

The fine must be substantial enough to bring home to both management and shareholders the need to operate within the law. Whether the fine will have the effect of putting the offender out of business will be relevant; in some bad cases this may be an acceptable consequence.

In considering the ability of the offending organisation to pay any financial penalty the court can take into account the power to allow time for payment or to order that the amount be paid in instalments.

The court should consider whether the level of fine would otherwise cause unacceptable harm to third parties.

Below is a **non-exhaustive** list of additional factual elements for the court to consider.

The court should identify whether any combination of these, or other relevant factors, should result in a proportionate increase or reduction in the level of fine.

#### **Factors to consider in adjusting the level of fine**

- The value, worth or available means of the offender
- Impact of fine on offender's ability to implement effective compliance programmes
- Impact of fine on employment of staff, service users, customers and local economy (but not shareholders)

***Question 14: Do you have any comments on the proposed adjustment of fine step for organisations?***

## Steps four to eight

As with the guideline for individuals the Council has included guidance on compensation and confiscation at step seven. In other guidelines for organisations these are considered at steps one and two because they must be considered before any other financial order. However, for this offence it is highly unlikely (though not impossible) that they would apply, so the relevant information is included at a later step.

### Step 7 – Compensation, confiscation and ancillary orders

In all cases, the court should consider whether to make [compensation](#) and/or other ancillary orders. Where the offence has resulted in personal injury, loss or damage the court must give reasons if it decides not to order compensation ([Sentencing Code, s.55](#)).

**Confiscation orders** under the Proceeds of Crime Act 2002 may only be made by the Crown Court. The Crown Court must proceed with a view to making a **confiscation order** if it is asked to do so by the prosecutor or if the Crown Court believes it is appropriate for it to do so.

Where, following conviction in a magistrates' court, the prosecutor applies for the offender to be committed to the Crown Court with a view to a confiscation order being considered, the magistrates' court must commit the offender to the Crown Court to be sentenced there (section 70 of the Proceeds of Crime Act 2002). This applies to summary only and either-way offences.

Confiscation must be dealt with before, and taken into account when assessing, any other fine or financial order (except compensation). (See Proceeds of Crime Act 2002 sections 6 and 13)

**Question 15: Do you have any comments on the proposed steps four to eight in the guideline for organisations?**

# Overall considerations

The preceding sections have outlined the Council's proposals for the guidelines and have invited comments on each aspect of the draft guidelines. This section considers issues that cut across the guidelines.

## Impact of the guidelines

The guidelines have been developed with current sentencing practice in mind. The guidelines are unlikely to have any significant impact on prison or probation resources. They may lead to an increase in fine amounts, and the guidelines specifically address the proportionality of the fine at step three. A [resource assessment](#) has been produced which sets out the likely impact of the draft guidelines on prison and probation resources.

The Council is exploring with magistrates and prosecuting authorities whether the guidelines work as expected, but would welcome comments from consultees on whether the draft guidelines are likely to change sentence levels and whether any change would be desirable.

***Question 16: Do you have views on the impact these guidelines may have on sentence outcomes?***

## Equality and diversity

The Sentencing Council considers matters relating to equality and diversity to be important in its work. The Council is always concerned if it appears that guidelines have different outcomes for different groups. The Council has had regard to its duty<sup>1</sup> under the Equality Act 2010 in drafting these proposals, specifically with respect to any potential effect of the proposals on victims and offenders with protected characteristics. There may be many causes for disparities in sentencing, some of which the Council is not able to do anything about.

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<sup>1</sup> The Public Sector Equality Duty (PSED) is a duty set out in section 149 of the Equality Act 2010 (the 2010 Act) which came into force on 5 April 2011. It is a legal duty which requires public authorities (and those carrying out public functions on their behalf) to have "due regard" to three "needs" or "limbs" when considering a new policy or operational proposal. Complying with the duty involves having due regard to each of the three limbs:


The first is the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited under the 2010 Act. The second is the need to advance equality of opportunity between those who share a "protected characteristic" and those who do not. The third is to foster good relations between those who share a "protected characteristic" and those who do not.

Under the PSED the protected characteristics are: race; sex; disability; age; sexual orientation; religion or belief; pregnancy and maternity; and gender reassignment. The protected characteristic of marriage and civil partnership is also relevant to the consideration of the first limb of the duty.

Section 149 of the Equality Act 2010 contains further detail about what is meant by advancing equality of opportunity and fostering good relations

The Council has commissioned an independent external contractor to undertake a project to review our work for any potential to cause disparity in sentencing across demographic groups. Aspects to be examined will include those such as the language used, factors, offence context, expanded explanations and structure of sentencing guidelines. The work will also consider whether any aspects of our processes of guideline development and revision have any implications for equalities and disparity in sentencing and how the Council can best engage with under-represented groups to increase awareness and understanding of sentencing guidelines.

The available demographic data, (sex, age group and ethnicity of offenders) is examined as part of the work on each guideline, to see if there are any concerns around potential disparities within sentencing. For some offences it may not be possible to draw any conclusions on whether there are any issues of disparity of sentence outcomes between different groups caused by the guidelines. However, the Council takes care to ensure that the guidelines operate fairly and includes reference to the Equal Treatment Bench Book in all guidelines:

Guideline users should be aware that the  [Equal Treatment Bench Book](#) covers important aspects of fair treatment and disparity of outcomes for different groups in the criminal justice system. It provides guidance which sentencers are encouraged to take into account wherever applicable, to ensure that there is fairness for all involved in court proceedings.

The Council has produced information on the demographic makeup (specifically age, ethnicity and sex) of adult offenders sentenced for sales of knives etc to persons under 18. It should be noted that there are limitations on the reliability of the demographic data<sup>2</sup> and therefore the data should be regarded as indicative only.

The data indicate that in 2016 to 2020, where the sex of offenders was known, the majority (91 per cent) of adult offenders sentenced for this offence were male and nearly 50 per cent of offenders were in the age group 40 – 59 years. There were very little data recorded on the ethnicity of offenders for this offence.<sup>3</sup>

Where the data has shown evidence of disparity in sentence outcomes for some groups of offenders, the Sentencing Council has placed wording in the relevant guidelines, to draw sentencers' attention to these disparities and to signpost courts to important information within the Equal Treatment Bench Book. Once the Council has considered the latest available data for this offence alongside responses received to this consultation, the Council will consider before publishing a definitive guideline whether similar wording is necessary. The current available demographic data can be seen within the data tables at: <https://www.sentencingcouncil.org.uk/research-and-resources/publications?s&cat=statistical-bulletin>

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<sup>2</sup> In 2016 to 2020, ethnicity information was unknown or not recorded for 94 per cent of offenders sentenced for the underage sale of knives etc; similarly, sex was unknown or not recorded for 40 per cent of offenders. The availability of demographic information is constrained by data coverage. For offenders sentenced for less serious offences which are mostly sentenced at magistrates' courts, ethnicity data in particular is less readily available. For more information, please see the Notes tab of the published data tables.

<sup>3</sup> For more information on offender demographics, including ethnicity, please see the Notes tab of the data tables.



The potential for disparities in sentencing to arise from aspects of sentencing guidelines may not be obvious and we are therefore seeking views widely on any such potential impacts. We would like to hear from those reading this document on these matters.

We would like to know whether there is anything in the draft guidelines we are consulting on which could cause, or contribute to, such disparities across different groups, and/or whether any changes to the draft guidelines could be made to address any disparities. These could relate to:

- the language used;
- culpability and harm factors;
- mitigating and aggravating factors;
- the expanded explanations;
- the context in which the offending takes place;
- the structure of the guidelines.

The Council would welcome suggestions from consultees as to any equality and diversity matters that it should address in the development of these guidelines.

***Question 17: Are there any aspects of the draft guidelines that you feel may cause or increase disparity in sentencing?***

***Question 18: Are there any existing disparities in sentencing of the offences covered in this guideline that you are aware of, which the draft guideline could and should address?***

***Question 19: Are there any other matters relating to equality and diversity that you consider we ought to be aware of and/or that we could and should address in the guideline?***

## **General observations**

We would also like to hear any other views you have on the proposals that you have not had the opportunity to raise in response to earlier questions.

***Question 20: Do you have any other comments on the proposed guidelines that have not been covered elsewhere?***



