



Sentencing Guidelines Council

**Magistrates' Court
Sentencing Guidelines**

Definitive Guideline

FOREWORD

The Magistrates' Court Sentencing Guidelines have been a settled feature of magistrates' courts for many years. This edition applies to all relevant cases appearing for allocation (mode of trial) or for sentence on or after 4 August 2008 and replaces the guidelines which were effective from 1 January 2004. It also supersedes the part of the Practice Direction covering Mode of Trial Decisions (Part V.51) in relation to offences contained within the guideline.

This is the most extensive guideline produced by the Council and covers most of the offences regularly coming before a magistrates' court which require decisions on allocation or on sentence. The guideline also contains explanatory material that sets out a common approach to more general issues.

For the first time, there is a statutory obligation on every court to have regard to this guideline in a relevant case and to give reasons when imposing a sentence outside the range identified.

This guideline is the result of an intensive and consultative process, which has at all stages benefited from the involvement of key users of the guidelines. The Council is extremely grateful to all who have played a part in developing the guideline and has greatly appreciated the time and thought that has gone into the preparation of responses to each aspect of the consultation.

The Council is also enormously grateful to the Sentencing Advisory Panel and, in particular, to the members of its advisory group, for the extensive consideration they have given, not only to detailed matters of content but also to ensuring a proper balance in the assessment of the seriousness of all the offences involved.

The advisory group has committed a significant amount of time and energy over the past two years to the very detailed work necessary to produce guidelines covering such a wide range of offences and issues. Its members have been Chris Armstrong (Justices' Clerks' Society), Professor Andrew Ashworth (Chairman of the Sentencing Advisory Panel), Cindy Barnett JP (Chairman of the Magistrates' Association), David Brewer (Justices' Clerks' Society), Judge Stephen Day (District Judge (Magistrates' Courts)), Anne Fuller JP (Member of the Sentencing Advisory Panel), David Mallen (Member of the Sentencing Advisory Panel), Judge David Meredith (District Judge (Magistrates' Courts)) and Judge Howard Riddle (District Judge (Magistrates' Courts) and Member of the Sentencing Advisory Panel).

The advice of the Panel, draft guidelines and these definitive guidelines are all available on www.sentencing-guidelines.gov.uk or can be obtained from the Sentencing Guidelines Secretariat at 4th Floor, 8-10 Great George Street, London SW1P 3AE. The website also contains a summary of the responses to the Council's consultation on the draft guidelines.

Chairman of the Council
May 2008

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Introduction

These guidelines are issued by the Sentencing Guidelines Council and cover offences for which sentence is frequently imposed in a magistrates' court when dealing with adult offenders. They apply to allocation (mode of trial) decisions and to sentences imposed on or after 4 August 2008 and replace the guidelines effective from 1 January 2004.

When dealing with an either way offence for which there is no plea or an indication of a not guilty plea, these guidelines will be relevant to the mode of trial decision and should be consulted at this stage. This is important because, in some cases, the ability to commit an offender to the Crown Court for sentence after trial may be limited. Where an offence is included in these guidelines, the guideline supersedes the equivalent part of the Mode of Trial guidelines in Part V.51 of the Consolidated Criminal Practice Direction.

These guidelines apply to sentencing in a magistrates' court whatever the composition of the court. They apply also to the Crown Court when dealing with appeals against sentences imposed in a magistrates' court and when sentencing for summary only offences. In all other cases, the Crown Court must have regard to any other definitive Council guidelines which are relevant to the offender's case.

Every court is under a statutory obligation to have regard to any relevant Council guideline.¹ If a court imposes a sentence of a different kind or outside the range indicated in a Council guideline, it is obliged to state its reasons for doing so.²

The guidelines provide greater guidance on both starting points and sentence ranges than the previous edition. They have been expanded to cover additional offences, the explanatory material has been revised and, in respect of offence guidelines, a new format has been adopted to reflect better the sentencing framework established by the Criminal Justice Act 2003. Where appropriate, guidelines issued by the Council or Court of Appeal are incorporated. What is included is necessarily a summary; **the original guideline or Court of Appeal judgment should be consulted for comprehensive guidance.** All guidelines issued by the Council are available at www.sentencing-guidelines.gov.uk or can be obtained from the Sentencing Guidelines Secretariat, 4th Floor, 8-10 Great George Street, London, SW1P 3AE.

User Guide

This user guide explains the key decisions involved in the sentencing process. A step-by-step summary is provided on the pullout card.

1. Assess offence seriousness (culpability and harm)

Offence seriousness is the starting point for sentencing under the Criminal Justice Act 2003. The court's assessment of offence seriousness will:

- determine which of the sentencing thresholds has been crossed;
- indicate whether a custodial, community or other sentence is the most appropriate;
- be the key factor in deciding the length of a custodial sentence, the onerousness of requirements to be incorporated in a community sentence and the amount of any fine imposed.

¹ Criminal Justice Act 2003, s.172(1)

² *ibid.*, s.174(2)(a)

When 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.³ In using these guidelines, this assessment should be approached in two stages:

1. Offence seriousness (culpability and harm)

A. Identify the appropriate starting point

The guidelines set out **examples** of the nature of activity which may constitute the offence, progressing from less to more serious conduct, and provide a **starting point** based on a **first time offender pleading not guilty**. The guidelines also specify a sentencing **range** for each example of activity. Refer to pages 145-146 for further guidance on the meaning of the terms 'starting point', 'range' and 'first time offender'.

Sentencers should begin by considering which of the examples of offence activity corresponds most closely to the circumstances of the particular case in order to identify the appropriate **starting point**:

- where the starting point is a fine, this is indicated as band A, B or C. The approach to assessing fines is set out on pages 148-155;
- where the community sentence threshold is passed, the guideline sets out whether the starting point should be a low, medium or high level community order. Refer to pages 160-162 for further guidance;
- where the starting point is a custodial sentence, refer to pages 163-164 for further guidance.

The Council's definitive guideline *Overarching Principles: Seriousness*, published 16 December 2004, identifies four levels of culpability for sentencing purposes (intention, recklessness, knowledge and negligence). The starting points in the individual offence guidelines assume that culpability is at the highest level applicable to the offence (often, but not always, intention). **Where a lower level of culpability is present, this should be taken into account.**

1. Offence seriousness (culpability and harm)

B. Consider the effect of aggravating and mitigating factors

Once the starting point has been identified, the court can add to or reduce this to reflect any aggravating or mitigating factors that impact on the **culpability** of the offender and/or **harm** caused by the offence to reach a provisional sentence. Any factors contained in the description of the activity used to reach the starting point must not be counted again.

The **range** is the bracket into which the provisional sentence will normally fall after having regard to factors which aggravate or mitigate the seriousness of the offence.

However:

- the court is not precluded from going outside the range where the facts justify it;
- previous convictions which aggravate the seriousness of the current offence may take the provisional sentence beyond the range, especially where there are significant other aggravating factors present.

In addition, where an offender is being sentenced for multiple offences, the court's assessment of the totality of the offending may result in a sentence above the range indicated for the individual offences, including a sentence of a different type. Refer to page 147 for further guidance.

³ Criminal Justice Act 2003, s.143(1)

The guidelines identify aggravating and mitigating factors which may be particularly relevant to each individual offence. These include some factors drawn from the general list of aggravating and mitigating factors in the Council's definitive guideline *Overarching Principles: Seriousness* published 16 December 2004, (reproduced on the pullout card). In each case, sentencers should have regard to the full list, which includes the factors that, by statute, make an offence more serious:

- offence committed while on bail for other offences;
- offence was racially or religiously aggravated;
- offence was motivated by, or demonstrates, hostility based on the victim's sexual orientation (or presumed sexual orientation);
- offence was motivated by, or demonstrates, hostility based on the victim's disability (or presumed disability);
- offender has previous convictions that the court considers can reasonably be treated as aggravating factors having regard to their relevance to the current offence and the time that has elapsed since conviction.

While the lists in the offence guidelines and pullout card aim to identify the most common aggravating and mitigating factors, **they are not intended to be exhaustive**. Sentencers should always consider whether there are any other factors that make the offence more or less serious.

2. Form a preliminary view of the appropriate sentence, then consider offender mitigation

When the court has reached a provisional sentence based on its assessment of offence seriousness, it should take into account matters of offender mitigation. The Council guideline *Overarching Principles: Seriousness* states that the issue of remorse should be taken into account at this point along with other mitigating features such as admissions to the police in interview.

3. Consider a reduction for a guilty plea

The Council guideline *Reduction in Sentence for a Guilty Plea*, revised 2007, states that the **punitive** elements of the sentence should be reduced to recognise an offender's guilty plea. The reduction has no impact on sentencing decisions in relation to ancillary orders, including disqualification.

The level of the reduction should reflect the stage at which the offender indicated a willingness to admit guilt and will be gauged on a sliding scale, ranging from a **recommended** one third (where the guilty plea was entered at the first reasonable opportunity), reducing to a **recommended** one quarter (where a trial date has been set) and to a **recommended** one tenth (for a guilty plea entered at the 'door of the court' or after the trial has begun). There is a presumption that the recommended reduction will be given unless there are good reasons for a lower amount.

The application of the reduction may affect the type, as well as the severity, of the sentence. It may also take the sentence below the **range** in some cases.

The court must state that it has reduced a sentence to reflect a guilty plea.⁴ It should usually indicate what the sentence would have been if there had been no reduction as a result of the plea.

⁴ Criminal Justice Act 2003, s.174(2)(d)

4. Consider ancillary orders, including compensation

Ancillary orders of particular relevance to individual offences are identified in the relevant guidelines; further guidance is set out on pages 168-174.

The court must **always** consider making a compensation order where the offending has resulted in personal injury, loss or damage.⁵ The court is required to give reasons if it decides not to make such an order.⁶

5. Decide sentence Give reasons

Sentencers must state reasons for the sentence passed in **every** case, including for any ancillary orders imposed.⁷ It is particularly important to identify any aggravating or mitigating factors, or matters of offender mitigation, that have resulted in a sentence more or less severe than the suggested starting point.

If a court imposes a sentence of a different kind or outside the **range** indicated in the guidelines, **it must state its reasons for doing so.**⁸

The court should also give its reasons for not making an order that has been canvassed before it or that it might have been expected to make.

⁵ Powers of Criminal Courts (Sentencing) Act 2000, s.130(1)

⁶ *ibid.*, s.130(3)

⁷ Criminal Justice Act 2003, s.174(1)

⁸ *ibid.*, s.174(2)(a)

Alcohol sale offences

Triable only summarily:

Maximum: Level 3 fine (s.141)

Level 5 fine (ss.146 and 147)

Offence seriousness (culpability and harm)

A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Sale to a child (i.e. person under 18)/to a drunk person	Band B fine	Band A fine to band C fine

Note: refer to page 150 for approach to fines for offences committed for commercial purposes

Offence seriousness (culpability and harm)

B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

<p>Factors indicating higher culpability</p> <ol style="list-style-type: none"> 1. No attempt made to establish age 2. Spirits/high alcohol level of drink 3. Drunk person highly intoxicated 4. Large quantity of alcohol supplied 5. Sale intended for consumption by group of children/drunk people 6. Offender in senior or management position <p>Factors indicating greater degree of harm</p> <ol style="list-style-type: none"> 1. Younger child/children 2. Drunk person causing distress to others 3. Drunk person aggressive 	
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Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

Consider a reduction for a guilty plea

Consider ancillary orders, including forfeiture or suspension of personal liquor licence

Refer to pages 168-174 for guidance on available ancillary orders

Decide sentence Give reasons

Note

Section 23 of the Violent Crime Reduction Act 2006 created a new offence of persistently selling alcohol to children, which came into force on 6 April 2007. This is committed if, on three or more different occasions within a period of three consecutive months, alcohol is unlawfully sold on the same premises to a person under 18. The offence is summary only and the maximum penalty is a £10,000 fine. **Consult your legal adviser for guidance on the approach to sentencing and the court's powers in relation to liquor licences.**

Alcohol/tobacco, fraudulently evade duty

Customs and Excise Management Act 1979,
s.170

Triable either way:

Maximum when tried summarily: Level 5 fine or three times the value of the goods (whichever is greater) and/or 6 months

Maximum when tried on indictment: 7 years

Refer to guideline *Fraud – banking and insurance fraud and obtaining credit through fraud, benefit fraud and revenue fraud* at pages 62b-62e

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Animal cruelty

Animal Welfare Act 2006, s.4 (unnecessary suffering); s.8 (fighting etc.); s.9 (breach of duty of person responsible for animal to ensure welfare)

Triable only summarily:

Maximum: £20,000 fine and/or 6 months (ss.4 and 8)

Level 5 fine and/or 6 months (s.9)

Offence seriousness (culpability and harm)

A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
One impulsive act causing little or no injury; short term neglect	Band C fine	Band B fine to medium level community order
Several incidents of deliberate ill-treatment/frightening animal(s); medium term neglect	High level community order	Medium level community order to 12 weeks custody
Attempt to kill/torture; animal baiting/conducting or permitting cock-fighting etc.; prolonged neglect	18 weeks custody	12 to 26 weeks custody

Offence seriousness (culpability and harm)

B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

<p>Factors indicating higher culpability</p> <ol style="list-style-type: none"> 1. Offender in position of special responsibility 2. Adult involves children in offending 3. Animal(s) kept for livelihood 4. Use of weapon 5. Offender ignored advice/warnings 6. Offence committed for commercial gain <p>Factors indicating greater degree of harm</p> <ol style="list-style-type: none"> 1. Serious injury or death 2. Several animals affected 	<p>Factors indicating lower culpability</p> <ol style="list-style-type: none"> 1. Offender induced by others 2. Ignorance of appropriate care 3. Offender with limited capacity
---	---

Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

Consider a reduction for a guilty plea

Consider ancillary orders, including compensation

Refer to pages 168-174 for guidance on available ancillary orders

Consider disqualification from ownership of animal

Decide sentence

Give reasons

Arson (criminal damage by fire)

Triable either way:

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: Life

Where offence committed in domestic context, refer to page 177 for guidance

Identify dangerous offenders

This is a serious offence for the purposes of the public protection provisions in the Criminal Justice Act 2003 – refer to page 187 and consult legal adviser for guidance

Offence seriousness (culpability and harm)

A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Minor damage by fire	High level community order	Medium level community order to 12 weeks custody
Moderate damage by fire	12 weeks custody	6 to 26 weeks custody
Significant damage by fire	Crown Court	Crown Court

Offence seriousness (culpability and harm)

B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

<p>Factor indicating higher culpability</p> <ol style="list-style-type: none"> 1. Revenge attack <p>Factors indicating greater degree of harm</p> <ol style="list-style-type: none"> 1. Damage to emergency equipment 2. Damage to public amenity 3. Significant public or private fear caused e.g. in domestic context 	<p>Factor indicating lower culpability</p> <ol style="list-style-type: none"> 1. Damage caused recklessly
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Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

Consider a reduction for a guilty plea

Consider ancillary orders, including compensation

Refer to pages 168-174 for guidance on available ancillary orders

Decide sentence Give reasons

Anti-social behaviour order, breach of – factors to take into consideration

This guideline and accompanying notes are taken from the Sentencing Guidelines Council's definitive guideline *Breach of an Anti-Social Behaviour Order*, published 9 December 2008

Key factors

- (a) An ASBO may be breached in a very wide range of circumstances and may involve one or more terms not being complied with. The examples given below are intended to illustrate how the scale of the conduct that led to the breach, taken as a whole, might come within the three levels of seriousness:
- **No harm caused or intended** – in the absence of intimidation or the causing of fear of violence, breaches involving being drunk or begging may be at this level, as may prohibited use of public transport or entry into a prohibited area, where there is no evidence that harassment, alarm or distress was caused or intended.
 - **Lesser degree of harm intended or likely** – examples may include lesser degrees of threats or intimidation, the use of seriously abusive language, or causing more than minor damage to property.
 - **Serious harm caused or intended** – breach at this level of seriousness will involve the use of violence, significant threats or intimidation or the targeting of individuals or groups of people in a manner that leads to a fear of violence.
- (b) The suggested starting points are based on the assumption that the offender had the highest level of culpability.
- (c) In the most serious cases, involving repeat offending and a breach causing serious harassment together with the presence of several aggravating factors, such as the use of violence, a sentence beyond the highest range will be justified.
- (d) When imposing a community order, the court must ensure that the requirements imposed are proportionate to the seriousness of the breach, compatible with each other, and also with the prohibitions of the ASBO if the latter is to remain in force. Even where the threshold for a custodial sentence is crossed, a custodial sentence is not inevitable.
- (e) An offender may be sentenced for more than one offence of breach, which occurred on different days. While consecutive sentences may be imposed in such cases, the overall sentence should reflect the totality principle.

Anti-social behaviour order, breach of

Triable either way:

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: 5 years

Note: A conditional discharge is not available as a sentence for this offence

Offence seriousness (culpability and harm)

A. Identify the appropriate starting point

Starting points based on first time offender* pleading not guilty

Examples of nature of activity	Starting point	Range
Breach where no harassment, alarm or distress was caused or intended	Low level community order	Band B fine to medium level community order
Breach involving a lesser degree of actual or intended harassment, alarm or distress than in the box below, or where such harm would have been likely had the offender not been apprehended	6 weeks custody	Medium level community order to 26 weeks custody
Breach involving serious actual or intended harassment, alarm or distress	26 weeks custody	Custody threshold to Crown Court

Offence seriousness (culpability and harm)

B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

Factor indicating higher culpability	Factor indicating lower culpability
<ol style="list-style-type: none"> Offender has a history of disobedience to court orders Breach was committed immediately or shortly after the order was made Breach was committed subsequent to earlier breach proceedings arising from the same order Targeting of a person the order was made to protect or a witness in the original proceedings 	<ol style="list-style-type: none"> Breach occurred after a long period of compliance The prohibition(s) breached was not fully understood, especially where an interim order was made without notice

Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

Consider a reduction for a guilty plea

Consider ancillary orders, including compensation

Refer to pages 168-174 for guidance on available ancillary orders

Decide sentence Give reasons

*For the purposes of this guideline a “first time offender” is one who does not have a previous conviction for breach of an ASBO

Assault occasioning actual bodily harm & racially or religiously aggravated assault occasioning actual bodily harm – factors to take into consideration

This guideline and accompanying notes are taken from the Sentencing Guidelines Council's definitive guideline *Assault and other offences against the person*, published 20 February 2008

Key factors

- (a) Matters of offender mitigation are often highly relevant to sentencing for this offence and may justify a non-custodial sentence, particularly in the case of a first time offender. Such a disposal might also be considered appropriate where there is a guilty plea.
- (b) The level of culpability for an offence of ABH is the same as that for an offence of common assault; all that the prosecution must prove is that force was intentionally or recklessly used on another. What distinguishes the two offences is the nature of the injury caused to the victim and this will be the key factor for the CPS to consider when deciding which offence to charge.
- (c) The use of a weapon (which for the purposes of this guideline includes traditional items such as an iron bar, baseball bat or knife) or part of the body (such as the head or other body part which may be equipped to inflict harm or greater harm, for example a shod foot) will usually increase the seriousness of an offence:
 - (i) In relation to culpability, where a weapon is carried by the offender to the scene with the intention of using it or having it available for use should the opportunity or need arise, high culpability is likely to be indicated.
 - (ii) In relation to harm, the type of weapon or part of the body and the way it is used will influence the extent of the effect on the assessment of seriousness. For instance, use of a knife or broken glass raises a high risk of serious injury. Similarly where the offender kicks or stamps on a prone victim, particularly if to a vulnerable part of the body.
- (d) Where a weapon is used and the assault is premeditated, that will cause the offence to be in the highest sentencing range. Where that is not the case, possession and/or use of a weapon is likely to increase sentence within the range either through an increase in culpability or an increase in harm.

Assault occasioning actual bodily harm
Racially or religiously aggravated assault occasioning actual bodily harm

Assault occasioning ABH: triable either way
 Maximum when tried summarily: Level 5 fine and/or 6 months
 Maximum when tried on indictment: 5 years

Racially or religiously aggravated assault occasioning ABH: triable either way
 Maximum when tried summarily: Level 5 fine and/or 6 months
 Maximum when tried on indictment: 7 years

Where offence committed in domestic context, refer to page 177 for guidance

Identify dangerous offenders
 These are specified offences for the purposes of the public protection provisions in the Criminal Justice Act 2003 – refer to page 187 and consult legal adviser for guidance

Offence seriousness (culpability and harm)
A. Identify the appropriate starting point
 Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Other assault resulting in minor, non-permanent injury	High level community order	Medium level community order to 26 weeks custody
Premeditated assault resulting in minor, non-permanent injury	24 weeks custody	12 weeks custody to Crown Court
Premeditated assault either resulting in relatively serious injury or involving the use of a weapon	Crown Court	Crown Court

Offence seriousness (culpability and harm)
B. Consider the effect of aggravating and mitigating factors (other than those within examples above)
 Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

	Factors indicating lower culpability 1. Provocation 2. Unintended injury
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Form a preliminary view of the appropriate sentence
If offender charged and convicted of the racially or religiously aggravated offence, increase the sentence to reflect this element
 Refer to pages 178-179 for guidance

Consider offender mitigation
 Common factors are identified in the pullout card

Consider a reduction for a guilty plea

Consider ancillary orders, including compensation
 Refer to pages 168-174 for guidance on available ancillary orders

Decide sentence
Give reasons

Triable only summarily:

Maximum: Level 5 fine and/or 6 months

This guideline and accompanying notes are taken from the Sentencing Guidelines Council's definitive guideline *Assault and other offences against the person*, published 20 February 2008

Key factors

- (a) The expectation is that this offence will involve little or no physical harm (it is anticipated that more serious injuries would result in a charge of assault occasioning ABH) and so sentencing will largely be guided by the level of offender culpability. In common with assault with intent to resist arrest, the offence involves an inherent aggravating factor not present in the offence of common assault in that the victim was performing a public service.
- (b) The levels of harm and culpability will be comparable to the offence of assault with intent to resist arrest and the offences are likely to be committed in similar circumstances. However, the maximum penalty for this offence is lower and this has influenced the sentencing ranges proposed.
- (c) Where the offence involves a sustained assault it will generally fall into the highest category of seriousness. Where no injury is occasioned, the appropriate sentence may be at the lower end of the range.

This guideline is based on the assumption that more serious injuries would be charged as ABH

Offence seriousness (culpability and harm)

A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Assault where no injury caused	Low level community order	Band B fine to medium level community order
Assault (defined as including spitting) resulting in minor, non-permanent injury	High level community order	Band C fine to 18 weeks custody
Sustained assault resulting in minor, non-permanent injury	18 weeks custody	High level community order to 24 weeks custody

Offence seriousness (culpability and harm)

B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

Factors indicating higher culpability <ol style="list-style-type: none"> 1. Escape 2. Head butting, kicking or biting 3. Picking up an item to use as a weapon, even if not used 	Factor indicating lower culpability <ol style="list-style-type: none"> 1. Genuine belief that the arrest was unlawful where this does not found a defence to the charge
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Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

Consider a reduction for a guilty plea

Consider ancillary orders, including compensation

Refer to pages 168-174 for guidance on available ancillary orders

Decide sentence Give reasons

Assault with intent to resist arrest

Triable either way:

Maximum when tried summarily: Level 5 fine and/or 6 months Maximum when tried on indictment: 2 years

This guideline and accompanying notes are taken from the Sentencing Guidelines Council’s definitive guideline *Assault and other offences against the person*, published 20 February 2008

Key factors

- (a) The expectation is that this offence will involve little or no physical harm (it is anticipated that more serious injuries would result in a charge of assault occasioning ABH) and so sentencing will largely be guided by the level of offender culpability.
- (b) The additional element of intent in this offence relates to the attempt to resist arrest and involves an inherent aggravating factor not present in the offence of common assault in that the victim (whether a police officer or a member of the public carrying out a citizen’s arrest) was performing a public service.
- (c) If the offender is prosecuted for the offence which gave rise to the arrest, the sentences imposed would normally be consecutive.

This guideline is based on the assumption that more serious injuries would be charged as ABH

Identify dangerous offenders

This is a specified offence for the purposes of the public protection provisions in the Criminal Justice Act 2003 – refer to page 187 and consult legal adviser for guidance

Offence seriousness (culpability and harm)
A. Identify the appropriate starting point
 Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Assault where no injury caused	Low level community order	Band C fine to high level community order
Assault (defined as including spitting) resulting in minor, non-permanent injury	High level community order	Low level community order to 26 weeks custody
Persistent attempt to resist arrest or Use of force or threats of force over and above that inherent in the offence	Crown Court	24 weeks custody to Crown Court

Offence seriousness (culpability and harm)
B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

<p>Factors indicating higher culpability</p> <ol style="list-style-type: none"> 1. Escape 2. Head butting, kicking or biting 3. Picking up an item to use as a weapon, even if not used 	<p>Factor indicating lower culpability</p> <ol style="list-style-type: none"> 1. Genuine belief that the arrest was unlawful where this does not found a defence to the charge
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Form a preliminary view of the appropriate sentence, then consider offender mitigation
 Common factors are identified in the pullout card

Consider a reduction for a guilty plea

Consider ancillary orders, including compensation
 Refer to pages 168-174 for guidance on available ancillary orders

Decide sentence
Give reasons

Bail, failure to surrender – factors to take into consideration

This guideline and accompanying notes are taken from the Sentencing Guidelines Council's definitive guideline *Fail to Surrender to Bail*, published 29 November 2007

Key factors

- (a) Whilst the approach to sentencing should generally be the same whether the offender failed to surrender to a court or to a police station and whether the offence is contrary to ss.6(1) or 6(2), the court must examine all the relevant circumstances.
- (b) The following factors may be relevant when assessing the *harm* caused by the offence:
- Where an offender fails to appear for a first court hearing but attends shortly afterwards, the only harm caused is likely to be the financial cost to the system. Where a case could not have proceeded even if the offender had surrendered to bail, this should be taken into account.
 - Where an offender appears for trial on the wrong day but enters a late guilty plea enabling the case to be disposed of to some degree at least, the harm caused by the delay may be offset by the benefits stemming from the change of plea.
 - The most serious harm is likely to result when an offender fails to appear for trial, especially if this results in witnesses being sent away. Where it has been possible to conclude proceedings in the absence of the offender, this may be relevant to the assessment of harm caused.
 - The level of harm is likely to be assessed as high where an offender fails to appear for sentence and is also seen to be flouting the authority of the court, such as where the avoidance of sentence results in the consequential avoidance of ancillary orders such as disqualification from driving, the payment of compensation or registration as a sex offender. This may increase the level of harm whenever the offender continues to present a risk to public safety.
 - Whilst the seriousness of the original offence does not of itself aggravate or mitigate the seriousness of the offence of failing to surrender, the circumstances surrounding the original offence may be relevant in assessing the harm arising from the Bail Act offence.
 - The circumstances in which bail to return to a police station is granted are less formal than the grant of court bail and the history of the individual case should be examined. There may be less *culpability* where bail has been enlarged on a number of occasions and less *harm* if court proceedings are not significantly delayed.
- (c) Where the failure to surrender to custody was 'deliberate':
- at or near the bottom of the sentencing range will be cases where the offender gave no thought at all to the consequences, or other mitigating factors are present, and the degree of delay or interference with the progress of the case was not significant in all the circumstances;
 - at or near the top of the range will be cases where aggravating factors 1, 2 or 4 opposite are present if there is also a significant delay and/or interference with the progress of the case.
- (d) A previous conviction that is likely to be 'relevant' for the purposes of this offence is one which demonstrates failure to comply with an order of a court.
- (e) Acquittal of the original offence does not automatically mitigate the Bail Act offence.
- (f) The fact that an offender has a disorganised or chaotic lifestyle should not normally be treated as offence mitigation, but may be regarded as offender mitigation depending on the particular facts.
- (g) A misunderstanding which does not amount to a defence may be a mitigating factor whereas a mistake on the part of the offender is his or her own responsibility.
- (h) Where an offender has literacy or language difficulties, these may be mitigation (where they do not amount to a defence) where potential problems were not identified and/or appropriate steps were not taken to mitigate the risk in the circumstances as known at the time that bail was granted.
- (i) An offender's position as the sole or primary carer of dependant relatives may be offender mitigation when it is the reason why the offender failed to surrender to custody.
- (j) The sentence for this offence should usually be in addition to any sentence for the original offence. Where custodial sentences are being imposed for a Bail Act offence and the original offence at the same time, the normal approach should be for the sentences to be consecutive. The length of any custodial sentence imposed must be commensurate with the seriousness of the offence(s).
- (k) If an offence is serious enough to justify the imposition of a community order, a curfew requirement with an electronic monitoring requirement may be particularly appropriate – see pages 160-162.

Bail, failure to surrender

Maximum when tried summarily: Level 5 fine and/or 3 months
 Maximum when tried on indictment: 12 months

In certain circumstances, a magistrates' court may commit to the Crown Court for sentence. **Consult your legal adviser for guidance.**

Offence seriousness (culpability and harm)		
A. Identify the appropriate starting point		
Starting points based on first time offender pleading not guilty		
Examples of nature of activity	Starting point	Range
Surrenders late on day but case proceeds as planned	Band A fine	Band A fine to Band B fine
Negligent or non-deliberate failure to attend causing delay and/or interference with the administration of justice	Band C fine	Band B fine to medium level community order
Deliberate failure to attend causing delay and/or interference with the administration of justice <i>The type and degree of harm actually caused will affect where in the range the case falls – see note (c) opposite</i>	14 days custody	Low level community order to 10 weeks custody

Offence seriousness (culpability and harm)	
B. Consider the effect of aggravating and mitigating factors (other than those within examples above)	
Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but these lists are not exhaustive	
Factors indicating higher culpability 1. Serious attempts to evade justice 2. Determined attempt seriously to undermine the course of justice 3. Previous relevant convictions and/or breach of court orders or police bail Factor indicating greater degree of harm 4. Lengthy absence	Factors indicating lower culpability Where not amounting to a defence: 1. Misunderstanding 2. Failure to comprehend bail significance or requirements 3. Caring responsibilities – see note (i) opposite Factor indicating lesser degree of harm 4. Prompt voluntary surrender

Form a preliminary view of the appropriate sentence, then consider offender mitigation
 Common factors are identified in the pullout card

Consider a reduction for a guilty plea

**Decide sentence
Give reasons**

In appropriate cases, a magistrates' court may impose one day's detention:
 Magistrates' Courts Act 1980, s.135

Bladed article/offensive weapon, possession of – factors to take into consideration

These guidelines and accompanying notes are drawn from the Court of Appeal's decision in *R v Cellaire and Poulton* [2003] 1 Cr App R (S) 116

Key factors

- (a) Concurrent sentences may be appropriate if the weapons offence is ancillary to a more serious offence; consecutive sentences may be appropriate if the offences are distinct and independent.
Refer to page 147 and consult your legal adviser for guidance.
- (b) When assessing offence seriousness, consider the offender's intention, the circumstances of the offence and the nature of the weapon involved.
- (c) Some weapons are inherently more dangerous than others but the nature of the weapon is not the primary determinant of offence seriousness. A relatively less dangerous weapon, such as a billiard cue or knuckle-duster, may be used to create fear and such an offence may be at least as serious as one in which a more obviously dangerous weapon, such as a knife or an acid spray, is being carried for self-defence or no actual attempt has been made by the offender to use it.
- (d) Nevertheless, the fact that the offender was carrying a weapon which is offensive per se may shed light on his or her intentions.

**Bladed article/offensive
 weapon, possession of**

Triable either way:
 Maximum when tried summarily: Level 5 fine and/or 6 months
 Maximum when tried on indictment: 4 years

Offence seriousness (culpability and harm) A. Identify the appropriate starting point Starting points based on first time offender pleading not guilty		
Examples of nature of activity	Starting point	Range
Weapon not used to threaten or cause fear	High level community order	Band C fine to 12 weeks custody
Weapon not used to threaten or cause fear but offence committed in dangerous circumstances	6 weeks custody	High level community order to Crown Court
Weapon used to threaten or cause fear and offence committed in dangerous circumstances	Crown Court	Crown Court

Offence seriousness (culpability and harm) B. Consider the effect of aggravating and mitigating factors (other than those within examples above) Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but these lists are not exhaustive	
<p>Factors indicating higher culpability</p> <ol style="list-style-type: none"> 1. Particularly dangerous weapon 2. Specifically planned use of weapon to commit violence, threaten violence or intimidate 3. Offence motivated by hostility towards minority individual or group 4. Offender under influence of drink or drugs 5. Offender operating in group or gang <p>Factors indicating greater degree of harm</p> <ol style="list-style-type: none"> 1. Offence committed at school, hospital or other place where vulnerable persons may be present 2. Offence committed on premises where people carrying out public services 3. Offence committed on or outside licensed premises 4. Offence committed on public transport 5. Offence committed at large public gathering, especially where there may be risk of disorder 	<p>Factors indicating lower culpability</p> <ol style="list-style-type: none"> 1. Weapon carried only on temporary basis 2. Original possession legitimate e.g. in course of trade or business

Form a preliminary view of the appropriate sentence, then consider offender mitigation
 Common factors are identified in the pullout card

Consider a reduction for a guilty plea

Consider ancillary orders, including compensation
 Refer to pages 168-174 for guidance on available ancillary orders
Consider deprivation of property (including weapon)

Decide sentence
Give reasons

Burglary in a dwelling – factors to take into consideration

These guidelines and accompanying notes are drawn from the Court of Appeal's decision in *R v McNerney and Keating* [2002] EWCA Crim 3003

Key factors

- (a) Even where the custody threshold is passed, consider whether a community order is appropriate (*McNerney and Keating* and refer also to page 160).
- (b) Cases in the Crown Court category may be suitable for a community order (see note (a) above), but should nevertheless be committed to the Crown Court for trial/sentence so that any breach of the order can be sentenced within the powers of that Court.
- (c) For attempted burglary or burglary under s.9(1)(a) of the Theft Act 1968, it is the offender's intention that will determine which of the three categories opposite the offence falls into, not the fact that nothing was stolen.
- (d) Relevant convictions that will aggravate offence seriousness in accordance with s.143(2) of the Criminal Justice Act 2003 may include convictions for both property and violent offences.

Burglary in a dwelling

Triable either way:

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: 14 years

Allocation Consult legal adviser for guidance

Offence is indictable only and must be sent to the Crown Court if:

- (1) The offender has been convicted of two other domestic burglaries committed on separate occasions after 30 November 1999 and one was committed after conviction for the other: Powers of Criminal Courts (Sentencing) Act 2000, s.111;
- (2) Any person was subjected to violence or the threat of violence: Magistrates' Courts Act 1980, sch.1

Offence seriousness (culpability and harm)

A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Unforced entry and low value theft with no aggravating features	Medium level community order	Low level community order to 12 weeks custody
Forced entry, goods stolen not high value, no aggravating features	12 weeks custody	High level community order to Crown Court
Goods stolen high value or any aggravating feature present	Crown Court	Crown Court

Offence seriousness (culpability and harm)

B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

<p>Factors indicating higher culpability</p> <ol style="list-style-type: none"> 1. Ransacking property 2. Professionalism 3. Victim deliberately targeted e.g. out of spite 4. Housebreaking implements or weapons carried <p>Factors indicating greater degree of harm</p> <ol style="list-style-type: none"> 1. Occupier at home or returns home while offender present 2. Goods stolen of sentimental value 	<p>Factors indicating lower culpability</p> <ol style="list-style-type: none"> 1. Offender played only a minor role in the burglary 2. Offence committed on impulse <p>Factor indicating lesser degree of harm</p> <ol style="list-style-type: none"> 1. No damage or disturbance to property
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Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

Consider a reduction for a guilty plea

Consider ancillary orders, including restitution and compensation

Refer to pages 168-174 for guidance on available ancillary orders

Consider deprivation of property

Decide sentence Give reasons

Burglary in a building other than a dwelling – factors to take into consideration

This guideline and accompanying notes are taken from the Sentencing Guidelines Council's definitive guideline *Theft and Burglary in a building other than a dwelling*, published 9 December 2008

Key factors

- (a) This guideline is concerned solely with burglary committed in a building other than a dwelling where an offender enters as a trespasser with intent to steal or, having entered as a trespasser, actually goes on to steal.
- (b) The starting points and sentencing ranges in this guideline are based on the assumption that the offender was motivated by greed or a desire to live beyond his or her means. To avoid double counting, such a motivation should not be treated as a factor that increases culpability.
- (c) The starting point is based on the loss suffered by the victim. Whilst, in general, the greater the loss, the more serious the offence, the monetary value of the loss may not reflect the full extent of the harm caused by the offence. The court should also take into account the impact of the offence on the victim (which may be significantly greater than the monetary value of the loss; this may be particularly important where the value of the loss is high in proportion to the victim's financial circumstances even though relatively low in absolute terms), any harm to persons other than the direct victim, and any harm in the form of public concern or erosion of public confidence.
- (d) Offences of this type will be aggravated where the offender targets premises because high value, often easily disposable, property is likely to be found there as this indicates professionalism and organisation in the offending, as well as an intention to derive a high level of gain. Targeting of vulnerable community premises may result in a higher than usual degree of harm due to the inconvenience, distress and expense caused to the victim. Where premises which have been burgled on a prior occasion are targeted, this indicates planning, organisation and professionalism and, therefore, should be regarded as increasing the offender's culpability. Repeat victimisation may also increase the harm caused by the offence in terms of distress, inconvenience and expense to the victim.
- (e) The Council has identified the following matters of offender mitigation which may be relevant to this offence:
 - (i) *Return of stolen property*
Whether and the degree to which the return of stolen property constitutes a matter of personal mitigation will depend on an assessment of the circumstances and, in particular, the voluntariness and timeliness of the return.
 - (ii) *Impact on sentence of offender's dependency*
Where an offence is motivated by an addiction (often to drugs, alcohol or gambling) this does not mitigate the seriousness of the offence, but a dependency may properly influence the type of sentence imposed. In particular, it may sometimes be appropriate to impose a drug rehabilitation requirement, an alcohol treatment requirement (for dependent drinkers) or an activity or supervision requirement including alcohol specific information, advice and support (for harmful and hazardous drinkers) as part of a community order or a suspended sentence order in an attempt to break the cycle of addiction and offending, even if an immediate custodial sentence would otherwise be warranted.
 - (iii) *Offender motivated by desperation or need*
The fact that an offence has been committed in desperation or need arising from particular hardship may count as personal mitigation in **exceptional circumstances**.

Burglary in a building other than a dwelling

Triable either way:

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: 10 years

Offence seriousness (culpability and harm)

A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Burglary involving goods valued at less than £2,000	Medium level community order	Band B fine to 26 weeks custody
Burglary involving goods valued at £2,000 or more but less than £20,000	18 weeks custody	High level community order to Crown Court
Burglary involving goods valued at £20,000 or more	Crown Court	Crown Court

Offence seriousness (culpability and harm)

B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

Factors indicating higher culpability

1. Targeting premises containing property of high value
2. Targeting vulnerable community premises
3. Targeting premises which have been burgled on prior occasion(s)
4. Possession of a weapon (where this is not charged separately)

Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card – see also note (e) opposite

Consider a reduction for a guilty plea

Consider ancillary orders, including compensation

Refer to pages 168-174 for guidance on available ancillary orders

Decide sentence

Give reasons

Child prostitution and pornography – factors to take into consideration

This guideline is taken from the Sentencing Guidelines Council's definitive guideline *Sexual Offences Act 2003*, published 30 April 2007

Key factors

- (a) Few cases will be suitable to be dealt with in a magistrates' court for the following reasons:
- The courts should consider making an order confiscating any profits stemming from the offender's criminal life-style or forfeiting any possessions (e.g. cameras, computers, property) used in connection with the commission of the offence. Only the Crown Court can make a confiscation order.
 - The starting point for the child prostitution and pornography offences will always be a custodial sentence.
 - In cases where a number of children are involved, consecutive sentences may be appropriate, leading to cumulative sentences significantly higher than the starting points for individual offences.
- (b) In accordance with s.80 and sch.3 of the Sexual Offences Act 2003, automatic notification requirements apply upon conviction to an offender aged 18 or over.

Triable either way:

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: 14 years

Identify dangerous offenders

These are serious offences for the purposes of the public protection provisions in the Criminal Justice Act 2003 – refer to page 187 and consult legal adviser for guidance

Offence seriousness (culpability and harm)

A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

These offences should normally be dealt with in the Crown Court. However, there may be rare cases of non-penetrative activity involving a victim aged 16 or 17 where the offender's involvement is minimal and not perpetrated for gain in which a custodial sentence within the jurisdiction of a magistrates' court may be appropriate.

Consult your legal adviser for further guidance.

Offence seriousness (culpability and harm)

B. Consider the effect of aggravating and mitigating factors

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

Factors indicating higher culpability

1. Background of threats or intimidation
2. Large-scale commercial operation
3. Use of drugs, alcohol or other substance to secure the victim's compliance
4. Forcing a victim to violate another person
5. Abduction or detention
6. Threats to prevent the victim reporting the activity
7. Threats to disclose victim's activity to friends/relatives
8. Images distributed to other children or persons known to the victim
9. Financial or other gain

Factors indicating greater degree of harm

1. Induced dependency on drugs
2. Victim has been manipulated into physical and emotional dependence on the offender
3. Storing, making available or distributing images in such a way that they can be inadvertently accessed by others

Factor indicating lower culpability

1. Offender also being controlled in prostitution or pornography and subject to threats or intimidation

Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

Consider a reduction for a guilty plea

Consider ancillary orders, including compensation

Refer to pages 168-174 for guidance on available ancillary orders

Decide sentence Give reasons

Common assault

Racially or religiously aggravated common assault

Criminal Justice Act 1988, s.39

Crime and Disorder Act 1998, s.29

Common assault: triable only summarily:
Maximum: Level 5 fine and/or 6 months

Racially or religiously aggravated common assault: triable either way
Maximum when tried summarily: Level 5 fine and/or 6 months
Maximum when tried on indictment: 2 years
Refer to pages 178-179 for further guidance

This guideline and accompanying notes are taken from the Sentencing Guidelines Council's definitive guideline *Assault and other offences against the person* published 20 February 2008

Key factors

- (a) Common assault is committed when a defendant intentionally or recklessly causes a victim to apprehend immediate unlawful force, or when such force is used. There is no need for injury to have been sustained or intended. In many cases, however, it is likely that there will be such an injury; indeed, there may be an overlap with the offence of assault occasioning actual bodily harm.
- (b) Since there is likely to be a wider range of relevant factors than for other assaults and offences against the person, a different approach to this guideline has been adopted which defines where the sentencing thresholds are crossed by reference to the type and number of aggravating factors.
- (c) In accordance with the Sentencing Guidelines Council's definitive guideline *Overarching Principles: Seriousness*, published 16 December 2004, the culpability of an offender is the initial factor in determining the seriousness of an offence. Factors indicating higher culpability are most relevant in terms of the threshold criteria for certain sentences in cases of common assault where no injury may have been inflicted but the victim was put in fear of violence. The list opposite is not intended to be exhaustive.
- (d) Where aggravating factors indicating a more than usually serious degree of harm are present, they will influence the determination of the appropriate sentence within the bracket of options available where a particular threshold has been crossed.
- (e) It is recognised that not all aggravating factors carry the same weight and that flexibility is required to avoid an over-prescriptive approach to when a threshold is passed. For that reason, the word 'normally' has been used in relation to the point at which the sentencing thresholds are crossed.

Where offence committed in domestic context, refer to page 177 for guidance

Identify dangerous offenders

Racially or religiously aggravated common assault is a specified offence for the purposes of the public protection provisions in the Criminal Justice Act 2003 – refer to page 187 and consult legal adviser for guidance

Offence seriousness (culpability and harm)

A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point
Assault where no injury caused	Fine
The community sentence threshold normally is passed where <u>one</u> aggravating factor indicating higher culpability is present	Community order
The custody threshold normally is passed where <u>two or more</u> aggravating factors indicating higher culpability are present	Custody

Offence seriousness (culpability and harm)

B. Consider the effect of aggravating and mitigating factors (other than those within examples opposite)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

Factors indicating higher culpability	Factors indicating lower culpability
<ol style="list-style-type: none">1. Use of a weapon to frighten or harm victim2. Offence was planned or sustained3. Head-butting, kicking, biting or attempted strangulation4. Offence motivated by, or demonstrating, hostility to victim on account of his or her sexual orientation or disability5. Offence motivated by hostility towards a minority group, or a member or members of it6. Abuse of a position of trust7. Offence part of a group action	<ol style="list-style-type: none">1. Provocation2. Single push, shove or blow
Factors indicating greater degree of harm <ol style="list-style-type: none">1. Injury2. Victim is particularly vulnerable or providing a service to the public3. Additional degradation of victim4. Offence committed in the presence of a child5. Forced entry to the victim's home6. Offender prevented the victim from seeking or obtaining help7. Previous violence or threats to same victim	

Form a preliminary view of the appropriate sentence If offender charged and convicted of the racially or religiously aggravated offence, increase the sentence to reflect this element

Refer to pages 178-179 for guidance

Consider offender mitigation

Common factors are identified in the pullout card

Consider a reduction for a guilty plea

Consider ancillary orders, including compensation

Refer to pages 168-174 for guidance on available ancillary orders

Decide sentence Give reasons

Triable only summarily:
Maximum: Level 5 fine and/or 6 months

Offence seriousness (culpability and harm)
A. Identify the appropriate starting point
Starting points based on first time offender pleading not guilty

Sending grossly offensive, indecent, obscene or menacing messages (s.127(1))

Examples of nature of activity	Starting point	Range
Single offensive, indecent, obscene or menacing call of short duration, having no significant impact on receiver	Band B fine	Band A fine to band C fine
Single call where extreme language used, having only moderate impact on receiver	Medium level community order	Low level community order to high level community order
Single call where extreme language used and substantial distress or fear caused to receiver; OR One of a series of similar calls as described in box above	6 weeks custody	High level community order to 12 weeks custody

Sending false message/persistent use of communications network for purpose of causing annoyance, inconvenience or needless anxiety (s.127(2))

Examples of nature of activity	Starting point	Range
Persistent silent calls over short period to private individual, causing inconvenience or annoyance	Band B fine	Band A fine to band C fine
Single hoax call to public or private organisation resulting in moderate disruption or anxiety	Medium level community order	Low level community order to high level community order
Single hoax call resulting in major disruption or substantial public fear or distress; OR One of a series of similar calls as described in box above	12 weeks custody	High level community order to 18 weeks custody

Offence seriousness (culpability and harm)
B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card

Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

Consider a reduction for a guilty plea

Consider ancillary orders, including compensation
Refer to pages 168-174 for guidance on available ancillary orders

Decide sentence
Give reasons

These notes are taken from the Sentencing Guidelines Council's definitive guideline *New Sentences: Criminal Justice Act 2003*, published 16 December 2004

Options in breach proceedings:

When dealing with breaches of community orders for offences committed after 4 April 2005, the court must either:

- **amend the terms of the original order so as to impose more onerous requirements.** The court may extend the duration of particular requirements within the order, but it cannot extend the overall length of the original order; or
- **revoke the original order and proceed to sentence for the original offence.** Where an offender has wilfully and persistently failed to comply with an order made in respect of an offence that is not punishable by imprisonment, the court can impose up to six months' custody.¹

Approach:

- having decided that a community order is commensurate with the seriousness of the offence, the primary objective when sentencing for breach of requirements is to ensure that those requirements are completed;
- a court sentencing for breach must take account of the extent to which the offender has complied with the requirements of the original order, the reasons for the breach, and the point at which the breach has occurred;
- if increasing the onerousness of requirements, sentencers should take account of the offender's ability to comply and should avoid precipitating further breach by overloading the offender with too many or conflicting requirements;
- there may be cases where the court will need to consider re-sentencing to a differently constructed community order in order to secure compliance with the purposes of the original sentence, perhaps where there has already been partial compliance or where events since the sentence was imposed have shown that a different course of action is likely to be effective;
- where available, custody should be the last resort, reserved for those cases of deliberate and repeated breach where all reasonable efforts to ensure that the offender complies have failed.

Where the original order was made by the Crown Court, breach proceedings must be commenced in that court unless the order provided that any failure to comply with its requirements may be dealt with in a magistrates' court. **Consult your legal adviser for further guidance when dealing with breach of a community order made in the Crown Court.**

¹ Criminal Justice Act 2003, sch.8, para. 9(1)(c)

Criminal damage (other than by fire)

Criminal Damage Act 1971, s.1(1)

Racially or religiously aggravated criminal damage

Crime and Disorder Act 1998, s.30

Criminal damage: triable only summarily if value involved does not exceed £5,000:
Maximum: Level 4 fine and/or 3 months

Triable either way if value involved exceeds £5,000:
Maximum when tried summarily: Level 5 fine and/or 6 months
Maximum when tried on indictment: 10 years

Racially or religiously aggravated criminal damage: triable either way
Maximum when tried summarily: Level 5 fine and/or 6 months
Maximum when tried on indictment: 14 years

Where offence committed in domestic context, refer to page 177 for guidance

Offence seriousness (culpability and harm)

A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Minor damage e.g. breaking small window; small amount of graffiti	Band B fine	Conditional discharge to band C fine
Moderate damage e.g. breaking large plate-glass or shop window; widespread graffiti	Low level community order	Band C fine to medium level community order
Significant damage up to £5,000 e.g. damage caused as part of a spree	High level community order	Medium level community order to 12 weeks custody
Damage between £5,000 and £10,000	12 weeks custody	6 to 26 weeks custody
Damage over £10,000	Crown Court	Crown Court

Offence seriousness (culpability and harm)

B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

Factors indicating higher culpability <ol style="list-style-type: none">1. Revenge attack2. Targeting vulnerable victim Factors indicating greater degree of harm <ol style="list-style-type: none">1. Damage to emergency equipment2. Damage to public amenity3. Significant public or private fear caused e.g. in domestic context	Factors indicating lower culpability <ol style="list-style-type: none">1. Damage caused recklessly2. Provocation
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Form a preliminary view of the appropriate sentence

If offender charged and convicted of the racially or religiously aggravated offence, increase the sentence to reflect this element

Refer to pages 178-179 for guidance

Consider offender mitigation

Common factors are identified in the pullout card

Consider a reduction for a guilty plea

Consider ancillary orders, including compensation

Refer to pages 168-174 for guidance on available ancillary orders

Decide sentence

Give reasons

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Cruelty to a child – factors to take into consideration

This guideline and accompanying notes are taken from the Sentencing Guidelines Council's definitive guidelines *Overarching Principles: Assaults on children and Cruelty to a child*, published 20 February 2008

Key factors

- (a) The same starting point and sentencing range is proposed for offences which might fall into the four categories (assault; ill-treatment or neglect; abandonment; and failure to protect). These are designed to take into account the fact that the victim is particularly vulnerable, assuming an abuse of trust or power and the likelihood of psychological harm, and designed to reflect the seriousness with which society as a whole regards these offences.
- (b) As noted above, the starting points have been calculated to reflect the likelihood of psychological harm and this cannot be treated as an aggravating factor. Where there is an especially serious physical or psychological effect on the victim, even if unintended, this should increase sentence.
- (c) The normal sentencing starting point for an offence of child cruelty should be a custodial sentence. The length of that sentence will be influenced by the circumstances in which the offence took place.
- (d) However, in considering whether a custodial sentence is the most appropriate disposal, the court should take into account any available information concerning the future care of the child.
- (e) Where the offender is the sole or primary carer of the victim or other dependants, this potentially should be taken into account for sentencing purposes, regardless of whether the offender is male or female. In such cases, an immediate custodial sentence may not be appropriate.
- (f) The most relevant areas of personal mitigation are likely to be:
 - Mental illness/depression
 - Inability to cope with the pressures of parenthood
 - Lack of support
 - Sleep deprivation
 - Offender dominated by an abusive or stronger partner
 - Extreme behavioural difficulties in the child, often coupled with a lack of support
 - Inability to secure assistance or support services in spite of every effort having been made by the offender.

Some of the factors identified above, in particular sleep deprivation, lack of support and an inability to cope, could be regarded as an inherent part of caring for children, especially when a child is very young and could be put forward as mitigation by most carers charged with an offence of child cruelty. It follows that, before being accepted as mitigation, there must be evidence that these factors were present to a high degree and had an identifiable and significant impact on the offender's behaviour.

Cruelty to a child

Triable either way:
 Maximum when tried summarily: Level 5 fine and/or 6 months
 Maximum when tried on indictment: 10 years

Identify dangerous offenders

This is a serious offence for the purposes of the public protection provisions in the Criminal Justice Act 2003 – refer to page 187 and consult legal adviser for guidance

Offence seriousness (culpability and harm)
A. Identify the appropriate starting point
 Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
(i) Short term neglect or ill-treatment (ii) Single incident of short-term abandonment (iii) Failure to protect a child from any of the above	12 weeks custody	Low level community order to 26 weeks custody
(i) Assault(s) resulting in injuries consistent with ABH (ii) More than one incident of neglect or ill-treatment (but not amounting to long-term behaviour) (iii) Single incident of long-term abandonment OR regular incidents of short-term abandonment (the longer the period of long-term abandonment or the greater the number of incidents of short-term abandonment, the more serious the offence) (iv) Failure to protect a child from any of the above	Crown Court	26 weeks custody to Crown Court
(i) Series of assaults (ii) Protracted neglect or ill-treatment (iii) Serious cruelty over a period of time (iv) Failure to protect a child from any of the above	Crown Court	Crown Court

Offence seriousness (culpability and harm)
B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

<ol style="list-style-type: none"> 1. Targeting one particular child from the family 2. Sadistic behaviour 3. Threats to prevent the victim from reporting the offence 4. Deliberate concealment of the victim from the authorities 5. Failure to seek medical help 	<ol style="list-style-type: none"> 1. Seeking medical help or bringing the situation to the notice of the authorities
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Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card – see also note (f) opposite

Consider a reduction for a guilty plea

Consider ancillary orders, including compensation

Refer to pages 168-174 for guidance on available ancillary orders

Decide sentence
Give reasons

Drugs – class A – fail to attend/ remain for initial assessment

Drugs Act 2005, s.12

Triable only summarily:

Maximum: Level 4 fine and/or 3 months

Offence seriousness (culpability and harm)

A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Failure to attend at the appointed place and time	Medium level community order	Band C fine to high level community order

Offence seriousness (culpability and harm)

B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card –
the following may be particularly relevant but **these lists are not exhaustive**

Factors indicating greater degree of harm	Factors indicating lower culpability
1. Threats or abuse to assessor or other staff	1. Offender turns up but at wrong place or time or fails to remain for duration of appointment 2. Subsequent voluntary contact to rearrange appointment

Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

Consider a reduction for a guilty plea

Consider ancillary orders

Refer to pages 168-174 for guidance on available ancillary orders

Decide sentence

Give reasons

Drugs – class A – fail/refuse to provide a sample

Triable only summarily:
Maximum: Level 4 fine and/or 3 months

Offence seriousness (culpability and harm)
A. Identify the appropriate starting point
Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Refusal to provide sample without good cause when required by police officer	Medium level community order	Band C fine to high level community order

Offence seriousness (culpability and harm)
B. Consider the effect of aggravating and mitigating factors (other than those within examples above)
Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

<p>Factor indicating greater degree of harm</p> <ol style="list-style-type: none"> Threats or abuse to staff 	<p>Factors indicating lower culpability</p> <ol style="list-style-type: none"> Subsequent voluntary contact with drug workers Subsequent compliance with testing on arrest/charge
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Form a preliminary view of the appropriate sentence, then consider offender mitigation
Common factors are identified in the pullout card

Consider a reduction for a guilty plea

Consider ancillary orders
Refer to pages 168-174 for guidance on available ancillary orders

Decide sentence
Give reasons

Triable either way:

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: 7 years

Offence seriousness (culpability and harm)

A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Possession of a very small quantity of the drug e.g. one small wrap or tablet	Band C fine	Band B fine to medium level community order
More than a very small quantity of the drug e.g. up to six wraps or tablets	Medium level community order	Low level community order to high level community order
Larger amounts	High level community order	Medium level community order to Crown Court
Possession of drug in prison – whether by prisoner or another	Crown Court	Crown Court

Offence seriousness (culpability and harm)

B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

<p>Factor indicating higher culpability</p> <p>1. Offender exercising or acting in position of special responsibility</p>	
<p>Factor indicating greater degree of harm</p> <p>1. Possession of drug in a public place or school</p>	

Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

Consider a reduction for a guilty plea

Consider ancillary orders, including forfeiture and destruction of drug

Refer to pages 168-174 for guidance on available ancillary orders

Decide sentence Give reasons

Drugs – class A – produce, supply, possess with intent to supply

Triable either way:

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: Life

Offence seriousness (culpability and harm)

A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

These offences should normally be dealt with in the Crown Court. However, there may be very rare cases involving non-commercial supply (e.g. between equals) of a very small amount (e.g. one small wrap or tablet) in which a custodial sentence within the jurisdiction of a magistrates' court may be appropriate.

Drugs – class B and C – possession

Misuse of Drugs Act 1971, s.5(2)

Triable either way:

Maximum when tried summarily: Level 4 fine and/or 3 months (class B); level 3 fine and/or 3 months (class C)

Maximum when tried on indictment: 5 years (class B); 2 years (class C)

Offence seriousness (culpability and harm)

A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Possession of a small amount of class B drug for personal use	Band B fine	Band A fine to low level community order
Possession of large amount of class B drug for personal use	Band C fine	Band B fine to 12 weeks custody

Offence seriousness (culpability and harm)

B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

Factor indicating higher culpability 1. Offender exercising or acting in position of special responsibility	Factors indicating lower culpability 1. Possession of Class C rather than Class B drug 2. Evidence that use was to help cope with a medical condition
Factor indicating greater degree of harm 1. Possession of drugs in a public place or school	

Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

Consider a reduction for a guilty plea

Consider ancillary orders, including forfeiture and destruction of drug

Refer to pages 168-174 for guidance on available ancillary orders

Decide sentence

Give reasons

Drugs – class B and C – supply, possess with intent to supply

Triable either way:

Maximum when tried summarily: Level 5 fine and/or 6 months (class B); level 4 fine and/or 3 months (class C)

Maximum when tried on indictment: 14 years (class B and class C)

Offence seriousness (culpability and harm)

A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Sharing minimal quantity between equals on a non-commercial basis e.g. a reefer	Band C fine	Band B fine to low level community order
Small scale retail supply to consumer	High level community order (class C) 6 weeks custody (class B)	Low level community order to 6 weeks custody (class C) Medium level community order to 26 weeks custody (class B)
Any other supply, including small scale supply in prison – whether by prisoner or another	Crown Court	Crown Court

Offence seriousness (culpability and harm)

B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

Factors indicating higher culpability

1. Offender exercising or acting in position of special responsibility

Factors indicating greater degree of harm

1. Supply to vulnerable persons including children
2. Offence committed on/in vicinity of school premises

(Note: supply on or in the vicinity of school premises is a statutory aggravating factor: Misuse of Drugs Act 1971, s.4A. Consult your legal adviser for guidance.)

Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

Consider a reduction for a guilty plea

Consider ancillary orders, including forfeiture and destruction of drug and forfeiture or suspension of personal liquor licence

Refer to pages 168-174 for guidance on available ancillary orders

**Decide sentence
Give reasons**

Triable either way:

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: 14 years

Offence seriousness (culpability and harm)

A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Very small scale cultivation for personal use only i.e. one or two plants	Band C fine	Band B fine to low level community order
Small scale cultivation for personal use and non-commercial supply to small circle of friends	High level community order	Medium level community order to 12 weeks custody
Commercial cultivation	Crown Court	Crown Court

Offence seriousness (culpability and harm)

B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

<p>Factors indicating higher culpability</p> <ol style="list-style-type: none"> 1. Use of sophisticated growing system 2. Use of sophisticated system of concealment 3. Persistent use/cultivation of cannabis <p>Factor indicating greater degree of harm</p> <ol style="list-style-type: none"> 1. Involvement of vulnerable/young persons 	<p>Factors indicating lower culpability</p> <ol style="list-style-type: none"> 1. Evidence drug used to help with a medical condition 2. Original planting carried out by others
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Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

Consider a reduction for a guilty plea

Consider ancillary orders, including forfeiture and destruction of drug

Refer to pages 168-174 for guidance on available ancillary orders

Decide sentence

Give reasons

Drunk and disorderly in a public place

Triable only summarily:
Maximum: Level 3 fine

Offence seriousness (culpability and harm)

A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Shouting, causing disturbance for some minutes	Band A fine	Conditional discharge to band B fine
Substantial disturbance caused	Band B fine	Band A fine to band C fine

Offence seriousness (culpability and harm)

B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

<p>Factors indicating higher culpability</p> <ol style="list-style-type: none"> 1. Offensive words or behaviour involved 2. Lengthy incident 3. Group action <p>Factors indicating greater degree of harm</p> <ol style="list-style-type: none"> 1. Offence committed at school, hospital or other place where vulnerable persons may be present 2. Offence committed on public transport 3. Victim providing public service 	<p>Factors indicating lower culpability</p> <ol style="list-style-type: none"> 1. Minor and non-threatening 2. Stopped as soon as police arrived
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Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

Consider a reduction for a guilty plea

Consider ancillary orders, including compensation and football banning order (where appropriate)

Refer to pages 168-174 for guidance on available ancillary orders

Decide sentence Give reasons

Electricity, abstract/use without authority – factors to take into consideration

Key factors

- (a) The starting points and sentencing ranges in this guideline are based on the assumption that the offender was motivated by greed or a desire to live beyond his or her means. To avoid double counting, such a motivation should not be treated as a factor that increases culpability.
- (b) When assessing the harm caused by this offence, the starting point should be the loss suffered by the victim. In general, the greater the loss, the more serious the offence. However, the monetary value of the loss may not reflect the full extent of the harm caused by the offence. The court should also take into account the impact of the offence on the victim, any harm to persons other than the direct victim, and any harm in the form of public alarm or erosion of public confidence.
- (c) The following matters of offender mitigation may be relevant to this offence:
- (i) *Offender motivated by desperation or need*
The fact that an offence has been committed in desperation or need arising from particular hardship may count as offender mitigation in exceptional circumstances.
 - (ii) *Voluntary restitution*
Whether and the degree to which payment for stolen electricity constitutes a matter of offender mitigation will depend on an assessment of the circumstances and, in particular, the voluntariness and timeliness of the payment.
 - (iii) *Impact on sentence of offender's dependency*
Many offenders convicted of acquisitive crimes are motivated by an addiction, often to drugs, alcohol or gambling. This does not mitigate the seriousness of the offence, but an offender's dependency may properly influence the type of sentence imposed. In particular, it may sometimes be appropriate to impose a drug rehabilitation requirement or an alcohol treatment requirement as part of a community order or a suspended sentence order in an attempt to break the cycle of addiction and offending, even if an immediate custodial sentence would otherwise be warranted.¹

¹ See para.2 on p.163. The Court of Appeal gave guidance on the approach to making drug treatment and testing orders, which also applies to imposing a drug rehabilitation requirement in *Attorney General's Reference No. 64 of 2003 (Boujettif and Harrison)* [2003] EWCA Crim 3514 and *Woods and Collins* [2005] EWCA Crim 2065 summarised in the Sentencing Guidelines Council *Guideline Judgments Case Compendium* (section (A) Generic Sentencing Principles) available at: www.sentencing-guidelines.gov.uk

Electricity, abstract/use without authority

Triable either way:

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: 5 years

Offence seriousness (culpability and harm)

A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Where the offence results in substantial commercial gain, a custodial sentence may be appropriate		
Offence involving evidence of planning and indication that the offending was intended to be continuing, such as using a device to interfere with the electricity meter or re-wiring to by-pass the meter	Medium level community order	Band A fine to high level community order

Offence seriousness (culpability and harm)

B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

Factor indicating greater degree of harm	
1. Risk of danger caused to property and/or life	

Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card – see also note (c) opposite

Consider a reduction for a guilty plea

Consider ancillary orders, including compensation

Refer to pages 168-174 for guidance on available ancillary orders

Decide sentence

Give reasons

Exploitation of prostitution

Sexual Offences Act 2003, s.52 (causing or inciting prostitution for gain); s.53 (controlling prostitution for gain)

Triable either way:

Maximum when tried summarily: Level 5 fine or 6 months Maximum when tried on indictment: 7 years

This guideline is taken from the Sentencing Guidelines Council's definitive guideline *Sexual Offences Act 2003*, published 30 April 2007

Identify dangerous offenders

These are specified offences for the purposes of the public protection provisions in the Criminal Justice Act 2003 – refer to page 187 and consult legal adviser for guidance

Offence seriousness (culpability and harm)

A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
No evidence victim was physically coerced or corrupted, and the involvement of the offender was minimal	Medium level community order	Band C fine to high level community order
No coercion or corruption but the offender is closely involved in the victim's prostitution	Crown Court	26 weeks custody to Crown Court
Evidence of physical and/or mental coercion	Crown Court	Crown Court

Offence seriousness (culpability and harm)

B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

Factors indicating higher culpability <ol style="list-style-type: none">1. Background of threats, intimidation or coercion2. Large-scale commercial operation3. Substantial gain (in the region of £5,000 and up)4. Use of drugs, alcohol or other substance to secure the victim's compliance5. Abduction or detention6. Threats to prevent the victim reporting the activity7. Threats to disclose victim's activity to friends/relatives Factor indicating greater degree of harm <ol style="list-style-type: none">1. Induced dependency on drugs	Factor indicating lower culpability <ol style="list-style-type: none">1. Offender also being controlled in prostitution and subject to threats or intimidation
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Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

Consider a reduction for a guilty plea

Consider ancillary orders, including compensation

Refer to pages 168-174 for guidance on available ancillary orders

Decide sentence Give reasons

Note

Where an offender has profited from his or her involvement in the prostitution of others, the court should consider making a confiscation order approximately equivalent to the profits enjoyed. Such an order may be made only in the Crown Court.

Triable either way:

Maximum when tried summarily: Level 5 fine or 6 months

Maximum when tried on indictment: 2 years

This guideline is taken from the Sentencing Guidelines Council's definitive guideline *Sexual Offences Act 2003*, published 30 April 2007

Key factors

- (a) This offence is committed where an offender intentionally exposes his or her genitals and intends that someone will see them and be caused alarm or distress. It is gender neutral, covering exposure of male or female genitalia to a male or female witness.
- (b) The Sentencing Guidelines Council guideline provides that, when dealing with a repeat offender, the starting point should be 12 weeks custody with a range of 4 to 26 weeks custody. The presence of aggravating factors may suggest that a sentence above the range is appropriate and that the case should be committed to the Crown Court.
- (c) In accordance with s.80 and sch.3 of the Sexual Offences Act 2003, automatic notification requirements apply upon conviction to an offender aged 18 or over where:
 - (1) the victim was under 18; or
 - (2) a term of imprisonment or a community sentence of at least 12 months is imposed.
- (d) This guideline may be relevant by way of analogy to conduct charged as the common law offence of outraging public decency; the offence is triable either way and has a maximum penalty of a level 5 fine and/or 6 months imprisonment when tried summarily.

Identify dangerous offenders

This is a specified offence for the purposes of the public protection provisions in the Criminal Justice Act 2003 – refer to page 187 and consult legal adviser for guidance

Offence seriousness (culpability and harm)

A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Basic offence as defined in the Act, assuming no aggravating or mitigating factors	Low level community order	Band B fine to medium level community order
Offence with an aggravating factor	Medium level community order	Low level community order to high level community order
Two or more aggravating factors	12 weeks custody	6 weeks custody to Crown Court

Offence seriousness (culpability and harm)

B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

Factors indicating higher culpability 1. Threats to prevent the victim reporting an offence 2. Intimidating behaviour/threats of violence Factor indicating greater degree of harm 1. Victim is a child	
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Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

Consider a reduction for a guilty plea

Consider ancillary orders, including compensation

Refer to pages 168-174 for guidance on available ancillary orders

Decide sentence Give reasons

False accounting

Theft Act 1968, s.17

Triable either way:

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: 7 years

Refer to guidelines *Fraud – banking and insurance fraud and obtaining credit through fraud, benefit fraud and revenue fraud* at pages 62b-62e and *Fraud – confidence* at pages 62f-62g

Firearm, carrying in public place

Triable either way (but triable only summarily if the firearm is an air weapon):

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: 7 years (12 months for imitation firearms)

Offence seriousness (culpability and harm)

A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Carrying an unloaded air weapon	Low level community order	Band B fine to medium level community order
Carrying loaded air weapon/imitation firearm/unloaded shot gun without ammunition	High level community order	Medium level community order to 26 weeks custody (air weapon) Medium level community order to Crown Court (imitation firearm, unloaded shot gun)
Carrying loaded shot gun/carrying shot gun or any other firearm together with ammunition for it	Crown Court	Crown Court

Offence seriousness (culpability and harm)

B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

<p>Factors indicating higher culpability</p> <ol style="list-style-type: none"> 1. Brandishing the firearm 2. Carrying firearm in a busy place 3. Planned illegal use <p>Factors indicating greater degree of harm</p> <ol style="list-style-type: none"> 1. Person or people put in fear 2. Offender participating in violent incident 	<p>Factors indicating lower culpability</p> <ol style="list-style-type: none"> 1. Firearm not in sight 2. No intention to use firearm 3. Firearm to be used for lawful purpose (not amounting to a defence)
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Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

Consider a reduction for a guilty plea

Consider ancillary orders, including compensation, forfeiture or suspension of personal liquor licence and football banning order (where appropriate)

Refer to pages 168-174 for guidance on available ancillary orders

Decide sentence Give reasons

Football related offences

Sporting Events (Control of Alcohol etc.) Act 1985: s.2(1) (possession of alcohol whilst entering or trying to enter ground); s.2(2) (being drunk in, or whilst trying to enter, ground)
 Football Offences Act 1991: s.2 (throwing missile); s.3 (indecent or racist chanting); s.4 (going onto prohibited areas)
 Criminal Justice and Public Order Act 1994: s.166 (unauthorised sale or attempted sale of tickets)

Triable only summarily:

Maximum: Level 2 fine (being drunk in ground)

Level 3 fine (throwing missile; indecent or racist chanting; going onto prohibited areas)

Level 5 fine (unauthorised sale of tickets)

Level 3 fine and/or 3 months (possession of alcohol)

Offence seriousness (culpability and harm)

A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Being drunk in, or whilst trying to enter, ground	Band A fine	Conditional discharge to band B fine
Going onto playing or other prohibited area; Unauthorised sale or attempted sale of tickets	Band B fine	Band A fine to band C fine
Throwing missile; Indecent or racist chanting	Band C fine	Band C fine
Possession of alcohol whilst entering or trying to enter ground	Band C fine	Band B fine to high level community order

Offence seriousness (culpability and harm)

B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

Factors indicating higher culpability

1. Commercial ticket operation; potential high cash value; counterfeit tickets
2. Inciting others to misbehave
3. Possession of large quantity of alcohol
4. Offensive language or behaviour (where not an element of the offence)

Factors indicating greater degree of harm

1. Missile likely to cause serious injury e.g. coin, glass, bottle, stone

Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

Consider a reduction for a guilty plea

Consider ancillary orders, including compensation and football banning order

Refer to pages 168-174 for guidance on available ancillary orders

Decide sentence Give reasons

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Fraud – banking and insurance fraud, and obtaining credit through fraud, benefit fraud, and revenue fraud – factors to take into consideration

This guideline and accompanying notes are taken from the Sentencing Guidelines Council's definitive guideline *Sentencing for Fraud - Statutory offences*, published 26 October 2009

The starting points and ranges for fraud against HM Revenue and Customs, for benefit fraud and for banking and insurance and obtaining credit through fraud are the same since the seriousness of all offences of organisational fraud derives from the extent of the fraudulent activity (culpability) and the financial loss caused or likely to be caused (harm).

Key factors common to these types of fraud

- (a) **As the determinants of seriousness include the “value of property or consequential loss involved”, the table provides both a fixed amount (on which the starting point is based) and a band (on which the sentencing range is based). Where the value is larger or smaller than the amount on which the starting point is based, this should lead to upward or downward movement from the starting point as appropriate. Where the amount the offender intended to obtain cannot be established, the appropriate measure will be the amount that was likely to be achieved in all the circumstances. Where the offender was entitled to part or all of the amount obtained, the starting point should be based on the amount to which they were not entitled.**
- (b) A further determinant of seriousness is whether the fraud was a single fraudulent transaction or a multiple fraud. Where one false declaration or a failure to disclose a change in circumstances results in multiple payments, this should be regarded as multiple fraud.
- (c) In general terms, the greater the loss, the more serious will be the offence. However, the financial value of the loss may not reflect the full extent of the harm caused. The court should also take into account; the impact of the offence on the victim (particularly where the loss may be significantly greater than the monetary value); harm to persons other than the direct victim (including the aggravation and stress of unscrambling the consequences of an offence); erosion of public confidence; and the difference between the loss intended and that which results (which may involve adjusting the assessment of seriousness to reflect the degree of loss caused).
- (d) When the offending involves a number of people acting co-operatively, this will aggravate an offence as it indicates planning or professional activity, and may also increase the degree of loss caused or intended. The role of each offender is important in determining the appropriate level of seriousness and movement above or below the starting point within the applicable level.
- (e) Use of another person's identity is an aggravating factor; the extent to which it aggravates an offence will be based on the degree of planning and the impact that the offence has had on the living victim or relatives of the deceased – whether the identity belongs to a living or deceased person is neutral for this purpose.
- (f) Matters of offender mitigation which may be particularly relevant to these types of fraud include:
 - *Voluntary cessation of offending* – a claim, supported by objective evidence, that an offender stopped offending before being apprehended should be treated as mitigation, particularly where accompanied by a genuine expression of remorse. The lapse of time since commission of the last offence is relevant to whether the claim is genuine, and reasons for the cessation will assist the court in determining whether it amounts to mitigation and if so, to what degree.
 - *Complete and unprompted disclosure of the extent of the fraud* – an admission that a greater sum has been obtained than that known to the authorities ensures that an offender is sentenced for the complete extent of the fraud. This is ready co-operation with the authorities and should be treated as mitigation. Provision of information about others involved in the fraud should also be treated as mitigation. Generally, the earlier the disclosure is given and the higher the degree of assistance, the greater the allowance for mitigation.

- *Voluntary restitution* – the timing of the voluntary restitution will indicate the degree to which it reflects genuine remorse. Generally, the earlier the property or money is returned the greater the degree of mitigation the offender should receive. If circumstances beyond the control of the offender prevent return of defrauded items, the degree of mitigation will depend on the point in time at which, and the determination with which the offender tried to return the items.
 - *Financial pressure* – financial pressure neither increases nor diminishes an offender’s culpability. However, where such pressure is **exceptional** and not of the offender’s own making, it may in very rare circumstances constitute mitigation.
- (g) A court should be aware that a confiscation order is an important sanction. Such an order may only be made in the Crown Court. The court must commit the offender to the Crown Court where this is requested by the prosecution with a view to an order being considered.
- (h) Ancillary orders should be considered in all cases, principally compensation, deprivation and disqualification from driving, as well as other powers particular to the type of offending behaviour.

Additional notes:

Banking and insurance fraud and obtaining credit through fraud:

- (i) A payment card or bank account fraud is unlikely to be committed in circumstances where the offender’s intention was not fraudulent from the outset.
- (ii) Use of another person’s identity is a feature of nearly all payment card and bank account frauds since in most cases the offender claims to be the account holder or a person authorised to deal with the account. Courts should therefore increase the starting point to reflect the presence of this aggravating factor.

Benefit fraud:

- (i) This guideline is based on an understanding that the prosecutor will generally seek summary trial for appropriate benefit fraud cases involving sums up to £35,000.
- (ii) The fact that defrauded sums may have been recovered is not relevant to the choice of the type of sentence to be imposed.
- (iii) The court should have regard to personal and family circumstances of offenders which will vary greatly and may be particularly significant to sentencing this type of fraud.

Revenue fraud:

- (i) The proposals for the sentencing of revenue fraud take as a starting point an offender who acts intentionally. Where the offender has acted recklessly (relevant only to offences under the Value Added Tax Act 1994), courts should adjust the assessment of seriousness to take account of this lower level of culpability.
- (ii) Payments to HMRC may be evaded in order to increase the profitability of a legitimate business or the level of an individual’s legitimate remuneration; payments may be fraudulently obtained from HMRC without any underlying legitimate activity at all as in a Carousel Fraud. Although the type of harm is the same since both result in a loss to HMRC, where payment is sought from HMRC in such circumstances, culpability is likely to be higher. Accordingly, such offences are likely to be regarded as more serious.

Fraud – banking and insurance fraud, and obtaining credit through fraud, benefit fraud, and revenue fraud

Fraud Act 2006, s.1
 Theft Act 1968, s.17
 Social Security Administration Act 1992, ss.111A(1), 111A(1A), 111A(1B), 111A(1D) and 111(1E)
 Tax Credits Act 2002, s.35
 Value Added Tax Act 1994, ss.72(1), (3) and (8)
 Finance Act 2000, s.144
 Customs and Excise Management Act 1979, ss.170(1)(a)(i) and (ii), 170(1)(b), 170(2)(a), 170B, 50(1)(a) and 50(2)

All offences: Triable either way

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: Fraud, 10 years; other offences, 7 years

Offences under s.112, Social Security Administration Act 1992 are not covered by this guideline.

This guideline does not apply to offences under s.50 or s.170, Customs and Excise Management Act 1979 which involve prohibited weapons and have a maximum penalty of 10 years.

Offence seriousness (culpability and harm)

A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Single fraudulent transaction, not fraudulent from the outset	Value £2,500* – Band B fine Value £12,500* – Medium level community order Value £60,000* – 12 weeks custody	Value less than £5,000 – Band A fine to low level community order Value £5,000 to less than £20,000 – Band B fine to 6 weeks custody Value £20,000 to less than £100,000 – Medium level community order to Crown Court
Single fraudulent transaction, fraudulent from the outset	Value £2,500* – Low level community order Value £12,500* – High level community order Value £60,000* – 26 weeks custody	Value less than £5,000 – Band A fine to medium level community order Value £5,000 to less than £20,000 – Band C fine to 18 weeks custody Value £20,000 to less than £100,000 - 6 weeks custody to Crown Court
Not fraudulent from the outset, and either <ul style="list-style-type: none"> • fraud carried out over a significant period of time or • multiple frauds Where value exceeds £100,000	Value £2,500* – Medium level community order Value £12,500* – 6 weeks custody Value £60,000* – Crown Court Crown Court	Value less than £5,000 – Band B fine to high level community order Value £5,000 to less than £20,000 – Medium level community order to 26 weeks custody Value £20,000 to less than £100,000 – 12 weeks custody to Crown Court Crown Court
Fraudulent from the outset, and either <ul style="list-style-type: none"> • fraud carried out over a significant period of time or • multiple frauds Where value £100,000 or more or fraud was professionally planned	Value £2,500* – High level community order Value £12,500* – 12 weeks custody Value £60,000* – Crown Court Crown Court	Value less than £5,000 – Low level community order to 6 weeks custody Value £5,000 to less than £20,000 – High level community order to Crown Court Value £20,000 to less than £100,000 – 18 weeks custody to Crown Court Crown Court

*Where the actual amount is greater or smaller than the value on which the starting point is based, that is likely to be one of the factors that will move the sentence within the range (see (a) on page 62b)

Offence seriousness (culpability and harm)

B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card - the following may be particularly relevant but **these lists are not exhaustive**

Factors indicating higher culpability

1. Number involved in the offence and role of the offender
2. Making repeated importations, particularly in the face of warnings from the authorities
3. Dealing in goods with an additional health risk

Factors indicating greater degree of harm

1. Use of another person's identity
2. Disposing of goods to under-aged purchasers

Factors indicating lower culpability

1. Peripheral involvement
2. Misleading or incomplete advice

Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

Consider a reduction for a guilty plea

Consider ancillary orders

Refer to pages 168-174 for guidance on available ancillary orders

**Decide sentence
Give reasons**

Fraud – confidence – factors to take into consideration

This guideline and accompanying notes are taken from the Sentencing Guidelines Council's definitive guideline *Sentencing for Fraud – Statutory offences*, published 26 October 2009

Key factors

- (a) This type of offending involves a victim transferring money and/or property as a result of being deceived or misled by the offender. An example of a simple confidence fraud is a person claiming to be collecting money for charity when, in fact, he or she intends to keep the money. Other examples of common confidence frauds are *Advance fee frauds* (such as lottery/prize draw scams and foreign money-making frauds) and *Fraudulent sales of goods and services* (where goods or services are never received/performed or are worth less than represented).
- (b) **As the determinants of seriousness include the “value of property or consequential loss involved”, the table provides both a fixed amount (on which the starting point is based) and a band (on which the sentencing range is based). Where the value is larger or smaller than the amount on which the starting point is based, this should lead to upward or downward movement as appropriate. Where the amount the offender intended to obtain cannot be established, the appropriate measure will be the amount that was likely to be achieved in all the circumstances.**
- (c) A further determinant of seriousness is whether the fraud was a single fraudulent transaction or a multiple fraud. Most confidence frauds will by their nature involve many actual or potential victims and multiple transactions and should be regarded as multiple fraud.
- (d) Targeting a vulnerable victim is also a determinant of seriousness. A victim might be vulnerable as a result of old age, youth or disability. In addition, some victims of advance fee frauds may have personalities which make them ‘vulnerable in a way and to a degree not typical of the general population’ because they fall for scams many times and may be targeted using ‘sucker lists’ of people who have previously fallen victim to scams. Care should be taken to ensure that where targeting a vulnerable victim is used to determine the appropriate level of seriousness and starting point, that it is not used again as an aggravating factor to move within the sentencing range.
- (e) In general terms, the greater the loss, the more serious will be the offence. However, the financial value of the loss may not reflect the full extent of the harm caused. The court should also take into account; the impact of the offence on the victim (particularly where the loss may be significantly greater than the monetary value); harm to persons other than the direct victim (including the aggravation and stress of unscrambling the consequences of an offence); erosion of public confidence; and the difference between the loss intended and that which results (which may involve adjusting the assessment of seriousness to reflect the degree of loss caused).
- (f) When the offending involves a number of people acting co-operatively, this will aggravate an offence as it indicates planning or professional activity, and may also increase the degree of loss caused or intended. The role of each offender is important in determining the appropriate level of seriousness and movement above or below the starting point within the applicable level.
- (g) Use of another person's identity is an aggravating factor; the extent to which it aggravates an offence will be based on the degree of planning and the impact that the offence has had on the living victim or relatives of the deceased – whether the identity belongs to a living or deceased person is neutral for this purpose.
- (h) Matters of offender mitigation which may be particularly relevant to this type of fraud include:
 - *Voluntary cessation of offending* – a claim, supported by objective evidence, that an offender stopped offending before being apprehended should be treated as mitigation, particularly where accompanied by a genuine expression of remorse. The lapse of time since commission of the last offence is relevant to whether the claim is genuine, and reasons for the cessation will assist the court in determining whether it amounts to mitigation and if so, to what degree.
 - *Complete and unprompted disclosure of the extent of the fraud* – an admission that a greater sum has been obtained than that known to the authorities ensures that an offender is sentenced for the complete extent of the fraud. This amounts to ready co-operation with the authorities and should be treated as mitigation. Provision of information about others involved in the fraud should also be treated as mitigation. Generally, the earlier the disclosure is given and the higher the degree of assistance, the greater the allowance for mitigation.
 - *Voluntary restitution* – the timing of the voluntary restitution will indicate the degree to which it reflects genuine remorse. Generally, the earlier the property or money is returned the greater the degree of mitigation the offender should receive. If circumstances beyond the control of the offender prevent return of defrauded items, the degree of mitigation will depend on the point in time at which, and the determination with which the offender tried to return the items.
 - *Financial pressure* – financial pressure neither increases nor diminishes an offender's culpability. However, where such pressure is **exceptional** and not of the offender's own making, it may in very rare circumstances constitute mitigation.
- (i) A court should be aware that a confiscation order is an important sanction. Such an order may only be made in the Crown Court. The court must commit the offender to the Crown Court where this is requested by the prosecution with a view to an order being considered.
- (j) Ancillary orders should be considered in all cases, principally compensation and deprivation.

All offences: Triable either way

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: Fraud, 10 years; other offences, 7 years

Offence seriousness (culpability and harm)

A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Single fraudulent transaction confidence fraud not targeting a vulnerable victim, and involving no or limited planning	Value £10,000* – Medium level community order Value £60,000* – 12 weeks custody	Value less than £20,000 – Band B fine to 6 weeks custody Value £20,000 to less than £100,000 – Medium level community order to Crown Court
Single fraudulent transaction confidence fraud involving targeting of a vulnerable victim	Value £10,000* – 6 weeks custody Value £60,000* – 26 weeks custody	Value less than £20,000 – Medium level community order to 26 weeks custody Value £20,000 to less than £100,000 – High level community order to Crown Court
Lower scale advance fee fraud or other confidence fraud characterised by a degree of planning and/or multiple transactions	Value £10,000* – Crown Court Value £60,000* – Crown Court	Value less than £20,000 – 26 weeks custody to Crown Court Value £20,000 to less than £100,000 – Crown Court
Large scale advance fee fraud or other confidence fraud involving the deliberate targeting of a large number of vulnerable victims	Value £10,000* – Crown Court Value £60,000* – Crown Court	Value less than £20,000 – Crown Court Value £20,000 to less than £100,000 – Crown Court

*Where the actual amount is greater or smaller than the value on which the starting point is based, that is likely to be one of the factors that will move the sentence within the range (see (b) on page 62f)

Offence seriousness (culpability and harm)

B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card - the following may be particularly relevant but **these lists are not exhaustive**

<p>Factors indicating higher culpability</p> <ol style="list-style-type: none"> Number involved in the offence and role of the offender Offending carried out over a significant period of time <p>Factors indicating greater degree of harm</p> <ol style="list-style-type: none"> Use of another person's identity Offence has lasting effect on the victim 	<p>Factors indicating lower culpability</p> <ol style="list-style-type: none"> Peripheral involvement Behaviour not fraudulent from the outset Misleading or inaccurate advice
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Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

Consider a reduction for a guilty plea

Consider ancillary orders

Refer to pages 168-174 for guidance on available ancillary orders

**Decide sentence
Give reasons**

Fraud – possessing, making or supplying articles for use in fraud – factors to take into consideration

This guideline and accompanying notes are taken from the Sentencing Guidelines Council's definitive guideline *Sentencing for Fraud - Statutory offences*, published 26 October 2009

Key factors

- (a) There are many ways in which offenders may commit this group of offences. 'Articles' will include any electronic programs or data stored electronically, false fronts for cash machines, computer programs for generating credit card numbers, lists of credit card or bank account details, 'sucker lists' and draft letters or emails for use in advance fee frauds.
- (b) Offenders who possess, make or supply articles for use in fraud intend their actions to lead to a fraud, and therefore have the highest level of culpability. The three offences in this group all involve an element of planning (whether by the offender or by another person) which indicates a higher level of culpability; this has been incorporated into the proposed starting points.
- (c) In relation to harm, the value of the fraud (either that intended by the offender where that can be ascertained, or that which was likely to be achieved) is not a determinant of seriousness for these offences but is a factor that should be taken into account in determining the appropriate sentence within the sentencing range.
- (d) Whilst in many cases no financial harm will have been caused, in some cases, particularly where the 'article' is a list of credit card or bank account details, the victim(s) may have been inconvenienced despite not suffering any financial loss. In all cases, the harm must be judged in light of the offender's culpability.
- (e) When the offending involves a number of people acting co-operatively, this will aggravate an offence as it indicates planning or professional activity, and may also increase the degree of loss caused or intended. The role of each offender is important in determining the appropriate level of seriousness and movement above or below the starting point within the applicable level.
- (f) Matters of offender mitigation which may be particularly relevant to this type of fraud include:
 - *Voluntary cessation of offending* – a claim, supported by objective evidence, that an offender stopped offending before being apprehended should be treated as mitigation, particularly where accompanied by a genuine expression of remorse. The lapse of time since commission of the last offence is relevant to whether the claim is genuine, and reasons for the cessation will assist the court in determining whether it amounts to mitigation and if so, to what degree.
 - *Complete and unprompted disclosure of the extent of the fraud* – an admission that a greater sum has been obtained than that known to the authorities ensures that an offender is sentenced for the complete extent of the fraud. This amounts to ready co-operation with the authorities and should be treated as mitigation. Provision of information about others involved in the fraud should also be treated as mitigation. Generally, the earlier the disclosure is given and the higher the degree of assistance, the greater the allowance for mitigation.
 - *Voluntary restitution* – the timing of the voluntary restitution will indicate the degree to which it reflects genuine remorse. Generally, the earlier the property or money is returned the greater the degree of mitigation the offender should receive. If circumstances beyond the control of the offender prevent return of defrauded items, the degree of mitigation will depend on the point in time at which, and the determination with which the offender tried to return the items.
 - *Financial pressure* – financial pressure neither increases nor diminishes an offender's culpability. However, where such pressure is **exceptional** and not of the offender's own making, it may in very rare circumstances constitute mitigation.
- (g) A court should be aware that a confiscation order is an important sanction. Such an order may only be made in the Crown Court. The court must commit the offender to the Crown Court where this is requested by the prosecution with a view to an order being considered.
- (h) Ancillary orders should be considered in all cases, principally compensation and deprivation.

Fraud – possessing, making or supplying articles for use in fraud

Possession of articles: Triable either way
 Maximum when tried summarily: Level 5 fine and/or 6 months
 Maximum when tried on indictment: 5 years

Making or supplying articles, and Fraud (s.1): Triable either way
 Maximum when tried summarily: Level 5 fine and/or 6 months
 Maximum when tried on indictment: 10 years

Offence seriousness (culpability and harm) A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Possessing articles intended for use in a less extensive and less skilfully planned fraud	Medium level community order	Low level community order to 26 weeks custody
Possessing articles for use in an extensive and skilfully planned fraud	Crown Court	6 weeks custody to Crown Court
Making or adapting, supplying or offering to supply articles intended for use in a less extensive and less skilfully planned fraud	26 weeks custody	High level community order to Crown Court
Making or adapting, supplying or offering to supply articles for use in an extensive and skilfully planned fraud	Crown Court	Crown Court

Offence seriousness (culpability and harm) B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

<p>Factors indicating higher culpability</p> <ol style="list-style-type: none"> 1. Number involved in the offence and role of the offender 2. Offending carried out over a significant period of time <p>Factors indicating greater degree of harm</p> <ol style="list-style-type: none"> 1. Use of another person's identity 2. Offence has lasting effect on the victim 	<p>Factor indicating lower culpability</p> <ol style="list-style-type: none"> 1. Peripheral involvement
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Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

Consider a reduction for a guilty plea

Consider ancillary orders

Refer to pages 168-174 for guidance on available ancillary orders

Decide sentence Give reasons

Blank Page

Going equipped, for theft

Triable either way:

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: 3 years

May disqualify if offence committed with reference to theft or taking of motor vehicles (no points available)

Offence seriousness (culpability and harm)

A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Possession of items for theft from shop or of vehicle	Medium level community order	Band C fine to high level community order
Possession of items for burglary, robbery	High level community order	Medium level community order to Crown Court

Offence seriousness (culpability and harm)

B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

Factors indicating higher culpability

1. Circumstances suggest offender equipped for particularly serious offence
2. Items to conceal identity

Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

Consider a reduction for a guilty plea

Consider ancillary orders

Refer to pages 168-174 for guidance on available ancillary orders

Consider disqualification from driving and deprivation of property

Decide sentence

Give reasons

Grievous bodily harm/unlawful wounding & racially or religiously aggravated grievous bodily harm/unlawful wounding – factors to take into consideration

This guideline and accompanying notes are taken from the Sentencing Guidelines Council's definitive guideline *Assault and other offences against the person*, published 20 February 2008

Key factors

- (a) Matters of offender mitigation are often highly relevant to sentencing for this offence and may justify a non-custodial sentence, particularly in the case of a first time offender. Such a disposal might also be considered appropriate where there is a guilty plea.
- (b) Offences contrary to s.20 and s.47 carry the same maximum penalty of 5 years imprisonment. However, the definitions of the offences make it clear that the degree of harm in a s.20 offence will be more serious. The CPS Charging Standard provides that more minor injuries should be charged under s.47. Where the offence ought to be sentenced as an assault occasioning actual bodily harm, that guideline should be used.
- (c) The use of a weapon (which for the purposes of this guideline includes traditional items such as an iron bar, baseball bat or knife) or part of the body (such as the head or other body part which may be equipped to inflict harm or greater harm for example a shod foot) will usually increase the seriousness of an offence:
 - (i) In relation to culpability, where a weapon is carried by the offender to the scene with the intention of using it or having it available for use should the opportunity or need arise, high culpability is likely to be indicated.
 - (ii) In relation to harm, the type of weapon or part of the body and the way it is used will influence the extent of the effect on the assessment of seriousness. For instance, use of a knife or broken glass raises a high risk of serious injury. Similarly where the offender kicks or stamps on a prone victim, particularly if to a vulnerable part of the body.
- (d) Relative seriousness of this offence is based on whether or not the assault was premeditated and on the degree of harm that resulted. Use of a weapon will cause the offence to be in a higher sentencing range than where a weapon is not used.

**Grievous bodily harm/
unlawful wounding**
**Racially or religiously
aggravated grievous bodily
harm/unlawful wounding**

Inflicting GBH/unlawful wounding: triable either way
Maximum when tried summarily: Level 5 fine and/or 6 months
Maximum when tried on indictment: 5 years

Racially or religiously aggravated GBH/unlawful wounding: triable either way
Maximum when tried summarily: Level 5 fine and/or 6 months
Maximum when tried on indictment: 7 years

Where offence committed in domestic context, refer to page 177 for guidance

Identify dangerous offenders

These are specified offences for the purposes of the public protection provisions in the Criminal Justice Act 2003 – refer to page 187 and consult legal adviser for guidance

Offence seriousness (culpability and harm)

A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Other assault where no weapon has been used	24 weeks custody	High level community order to Crown Court
Premeditated assault where no weapon has been used	Crown Court	24 weeks custody to Crown Court
Premeditated assault where a weapon has been used or Other assault where particularly grave injury results or a weapon has been used	Crown Court	Crown Court

Offence seriousness (culpability and harm)

B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

Factor indicating lower culpability: 1. Provocation
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**Form a preliminary view of the appropriate sentence
If offender charged and convicted of the racially or religiously
aggravated offence, increase the sentence to reflect this element**

Refer to page 177 for guidance

Consider offender mitigation

Common factors are identified in the pullout card

Consider a reduction for a guilty plea

Consider ancillary orders, including compensation

Refer to pages 168-174 for guidance on available ancillary orders

**Decide sentence
Give reasons**

Triable either way:

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: 14 years

These guidelines are drawn from the Court of Appeal's decision in *R v Webbe and others* [2001] EWCA Crim 1217

Offence seriousness (culpability and harm)

A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Property worth £1,000 or less acquired for offender's own use	Band B fine	Band B fine to low level community order
Property worth £1,000 or less acquired for re-sale; or Property worth more than £1,000 acquired for offender's own use; or Presence of at least one aggravating factor listed below – regardless of value	Medium level community order	Low level community order to 12 weeks custody Note: the custody threshold is likely to be passed if the offender has a record of dishonesty offences
Sophisticated offending; or Presence of at least two aggravating factors listed below	12 weeks custody	6 weeks custody to Crown Court
Offence committed in context of a business; or Offender acts as organiser/distributor of proceeds of crime; or Offender makes self available to other criminals as willing to handle the proceeds of thefts or burglaries; or Offending highly organised, professional; or Particularly serious original offence, such as armed robbery	Crown Court	Crown Court

Offence seriousness (culpability and harm)

B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

<p>Factors indicating higher culpability</p> <ol style="list-style-type: none"> 1. Closeness of offender to primary offence. Closeness may be geographical, arising from presence at or near the primary offence when it was committed, or temporal, where the handler instigated or encouraged the primary offence beforehand, or, soon after, provided a safe haven or route for disposal 2. High level of profit made or expected by offender <p>Factors indicating greater degree of harm</p> <ol style="list-style-type: none"> 1. Seriousness of the primary offence, including domestic burglary 2. High value of goods to victim, including sentimental value 3. Threats of violence or abuse of power by offender over others, such as an adult commissioning criminal activity by children, or a drug dealer pressurising addicts to steal in order to pay for their habit 	<p>Factors indicating lower culpability</p> <ol style="list-style-type: none"> 1. Little or no benefit to offender 2. Voluntary restitution to victim <p>Factor indicating lower degree of harm</p> <ol style="list-style-type: none"> 1. Low value of goods
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**Form a preliminary view of the appropriate sentence,
then consider offender mitigation**

Common factors are identified in the pullout card

Consider a reduction for a guilty plea

Consider ancillary orders, including restitution and compensation

Refer to pages 168-174 for guidance on available ancillary orders

Consider deprivation of property

Decide sentence

Give reasons

Harassment – putting people in fear of violence

Protection from Harassment Act 1997, s.4

Racially or religiously aggravated harassment – putting people in fear of violence

Crime and Disorder Act 1998, s.32

Harassment: triable either way

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: 5 years

Racially or religiously aggravated harassment: triable either way

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: 7 years

Where offence committed in domestic context, refer to page 177 for guidance

Identify dangerous offenders

This is a specified offence for the purposes of the public protection provisions in the Criminal Justice Act 2003 – refer to page 187 and consult legal adviser for guidance

Offence seriousness (culpability and harm)

A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
A pattern of two or more incidents of unwanted contact	6 weeks custody	High level community order to 18 weeks custody
Deliberate threats, persistent action over a longer period; or Intention to cause fear of violence	18 weeks custody	12 weeks custody to Crown Court
Sexual threats, vulnerable person targeted	Crown Court	Crown Court

Offence seriousness (culpability and harm)

B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

<p>Factors indicating higher culpability</p> <ol style="list-style-type: none"> 1. Planning 2. Offender ignores obvious distress 3. Visits in person to victim's home or workplace 4. Offender involves others 5. Using contact arrangements with a child to instigate offence <p>Factors indicating greater degree of harm</p> <ol style="list-style-type: none"> 1. Victim needs medical help/counselling 2. Physical violence used 3. Victim aware that offender has history of using violence 4. Grossly violent or offensive material sent 5. Children frightened 6. Evidence that victim changed lifestyle to avoid contact 	<p>Factors indicating lower culpability</p> <ol style="list-style-type: none"> 1. Limited understanding of effect on victim 2. Initial provocation
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**Form a preliminary view of the appropriate sentence
If offender charged and convicted of the racially or religiously
aggravated offence, increase the sentence to reflect this element**

Refer to pages 178-179 for guidance

Consider offender mitigation

Common factors are identified in the pullout card

Consider a reduction for a guilty plea

Consider making a restraining order

Consider ancillary orders, including compensation

Refer to pages 168-174 for guidance on available ancillary orders

Decide sentence

Give reasons

Harassment (without violence) Racially or religiously aggravated harassment (non violent)

Protection from Harassment Act 1997, s.2

Crime and Disorder Act 1998, s.32

Harassment: triable only summarily
Maximum: Level 5 fine and/or 6 months

Racially or religiously aggravated harassment: triable either way
Maximum when tried summarily: Level 5 fine and/or 6 months Maximum when tried on indictment: 2 years

Where offence committed in domestic context, refer to page 177 for guidance

Offence seriousness (culpability and harm)

A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Small number of incidents	Medium level community order	Band C fine to high level community order
Constant contact at night, trying to come into workplace or home, involving others	6 weeks custody	Medium level community order to 12 weeks custody
Threatening violence, taking personal photographs, sending offensive material	18 weeks custody	12 to 26 weeks custody

Offence seriousness (culpability and harm)

B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

<p>Factors indicating higher culpability</p> <ol style="list-style-type: none"> 1. Planning 2. Offender ignores obvious distress 3. Offender involves others 4. Using contact arrangements with a child to instigate offence <p>Factors indicating greater degree of harm</p> <ol style="list-style-type: none"> 1. Victim needs medical help/counselling 2. Action over long period 3. Children frightened 4. Use or distribution of photographs 	<p>Factors indicating lower culpability</p> <ol style="list-style-type: none"> 1. Limited understanding of effect on victim 2. Initial provocation
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Form a preliminary view of the appropriate sentence

If offender charged and convicted of the racially or religiously aggravated offence, increase the sentence to reflect this element

Refer to pages 178-179 for guidance

Consider offender mitigation

Common factors are identified in the pullout card

Consider a reduction for a guilty plea

Consider making a restraining order

Consider ancillary orders, including compensation

Refer to pages 168-174 for guidance on available ancillary orders

Decide sentence

Give reasons

Identity Cards Act 2006, s.25(5) (possession of a false identity document (as defined in s.26 – includes a passport))

Identity documents – possess false/another’s/improperly obtained

Triable either way:
 Maximum when tried summarily: Level 5 fine and/or 6 months
 Maximum when tried on indictment: 2 years (s.25(5))

Note: possession of a false identity document with the intention of using it is an indictable-only offence (Identity Cards Act 2006, s.25(1)). The maximum penalty is 10 years imprisonment.

Offence seriousness (culpability and harm)		
A. Identify the appropriate starting point		
Starting points based on first time offender pleading not guilty		
Examples of nature of activity	Starting point	Range
Single document possessed	Medium level community order	Band C fine to high level community order
Small number of documents, no evidence of dealing	12 weeks custody	6 weeks custody to Crown Court
Considerable number of documents possessed, evidence of involvement in larger operation	Crown Court	Crown Court

Offence seriousness (culpability and harm)	
B. Consider the effect of aggravating and mitigating factors (other than those within examples above)	
Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but these lists are not exhaustive	
<p>Factors indicating higher culpability</p> <ol style="list-style-type: none"> 1. Clear knowledge that documents false 2. Number of documents possessed (where not in offence descriptions above) <p>Factors indicating greater degree of harm</p> <ol style="list-style-type: none"> 1. Group activity 2. Potential impact of use (where not in offence descriptions above) 	<p>Factor indicating lower culpability</p> <ol style="list-style-type: none"> 1. Genuine mistake or ignorance

Form a preliminary view of the appropriate sentence, then consider offender mitigation
 Common factors are identified in the pullout card

Consider a reduction for a guilty plea

**Decide sentence
Give reasons**

Triable either way:

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: 7 years

Refer to guidelines *Fraud – banking and insurance fraud and obtaining credit through fraud, benefit fraud and revenue fraud* at pages 62b - 62e

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Indecent photographs of children

Protection of Children Act 1978, s.1
Criminal Justice Act 1988, s.160

Triable either way:

Maximum when tried summarily: Level 5 fine or 6 months

Maximum when tried on indictment: 5 years for possession; otherwise 10 years

This guideline is taken from the Sentencing Guidelines Council's definitive guideline *Sexual Offences Act 2003*, published 30 April 2007

Key factors:

(a) The levels of seriousness (in ascending order) for sentencing for offences involving pornographic images are:

Level 1 Images depicting erotic posing with no sexual activity

Level 2 Non-penetrative sexual activity between children, or solo masturbation by a child

Level 3 Non-penetrative sexual activity between adults and children

Level 4 Penetrative sexual activity involving a child or children, or both children and adults

Level 5 Sadism or penetration of, or by, an animal.

(b) Pseudo-photographs generally should be treated less seriously than real photographs.

(c) Starting points should be higher where the subject of the indecent photograph(s) is a child under 13.

(d) In accordance with section 80 and schedule 3 of the Sexual Offences Act 2003, automatic notification requirements apply upon conviction to an offender aged 18 or over where the offence involved photographs of children aged under 16.

Offence seriousness (culpability and harm)

A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Possession of a large amount of level 1 material and/or no more than a small amount of level 2, and the material is for personal use and has not been distributed or shown to others	Medium level community order	Band C fine to high level community order
Offender in possession of a large amount of material at level 2 or a small amount at level 3 Offender has shown or distributed material at level 1 on a limited scale Offender has exchanged images at level 1 or 2 with other collectors, but with no element of financial gain	12 weeks custody	4 to 26 weeks custody
Possession of a large quantity of level 3 material for personal use Possession of a small number of images at level 4 or 5 Large number of level 2 images shown or distributed Small number of level 3 images shown or distributed	26 weeks custody	4 weeks custody to Crown Court
Possession of a large quantity of level 4 or 5 material for personal use only Large number of level 3 images shown or distributed	Crown Court	26 weeks custody to Crown Court
Offender traded material at levels 1-3 Level 4 or 5 images shown or distributed Offender involved in the production of material of any level	Crown Court	Crown Court

Offence seriousness (culpability and harm)

**B. Consider the effect of aggravating and mitigating factors
(other than those within examples above)**

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

Factors indicating higher culpability

1. Collection is systematically stored or organised, indicating a sophisticated approach to trading or a high level of personal interest
2. Use of drugs, alcohol or other substance to facilitate the offence of making or taking
3. Background of intimidation or coercion
4. Threats to prevent victim reporting the activity
5. Threats to disclose victim's activity to friends/relatives
6. Financial or other gain

Factors indicating greater degree of harm

1. Images shown or distributed to others, especially children
2. Images stored, made available or distributed in such a way that they can be inadvertently accessed by others

Factors indicating lower culpability

1. A few images held solely for personal use
2. Images viewed but not stored
3. A few images held solely for personal use and it is established that the subject is aged 16 or 17 and that he or she was consenting

**Form a preliminary view of the appropriate sentence,
then consider offender mitigation**

Common factors are identified in the pullout card

Consider a reduction for a guilty plea

**Consider ancillary orders, including compensation and deprivation of property
used to commit the offence**

Refer to pages 168-174 for guidance on available ancillary orders

**Decide sentence
Give reasons**

Keeping a brothel used for prostitution

Sexual Offences Act 2003, s.55

Triable either way:

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: 7 years

This guideline is taken from the Sentencing Guidelines Council's definitive guideline *Sexual Offences Act 2003*, published 30 April 2007

Offence seriousness (culpability and harm)

A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Involvement of the offender was minimal	Medium level community order	Band C fine to high level community order
Offender is the keeper of the brothel and is personally involved in its management	Crown Court	26 weeks to Crown Court
Offender is the keeper of a brothel and has made substantial profits in the region of £5,000 and upwards	Crown Court	Crown Court

Offence seriousness (culpability and harm)

B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

Factors indicating higher culpability	Factors indicating lower culpability
<ol style="list-style-type: none">1. Background of threats, intimidation or coercion2. Large-scale commercial operation3. Personal involvement in the prostitution of others4. Abduction or detention5. Financial or other gain	<ol style="list-style-type: none">1. Using employment as a route out of prostitution and not actively involved in exploitation2. Coercion by third party

Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

Consider a reduction for a guilty plea

Consider ancillary orders, including compensation

Refer to pages 168-174 for guidance on available ancillary orders

Decide sentence Give reasons

Note

Where an offender has profited from his or her involvement in the prostitution of others, the courts should always consider making a confiscation order approximately equivalent to the profits enjoyed. Such an order may be made only in the Crown Court.

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Making off without payment – factors to take into consideration

Key factors

- (a) The starting points and sentencing ranges in this guideline are based on the assumption that the offender was motivated by greed or a desire to live beyond his or her means. To avoid double counting, such a motivation should not be treated as a factor that increases culpability.
- (b) When assessing the harm caused by this offence, the starting point should be the loss suffered by the victim. In general, the greater the loss, the more serious the offence. However, the monetary value of the loss may not reflect the full extent of the harm caused by the offence. The court should also take into account the impact of the offence on the victim, any harm to persons other than the direct victim, and any harm in the form of public alarm or erosion of public confidence.
- (c) The following matters of offender mitigation may be relevant to this offence:
- (i) *Offender motivated by desperation or need*
The fact that an offence has been committed in desperation or need arising from particular hardship may count as offender mitigation in exceptional circumstances.
 - (ii) *Voluntary return of stolen property*
Whether and the degree to which the return of stolen property constitutes a matter of offender mitigation will depend on an assessment of the circumstances and, in particular, the voluntariness and timeliness of the return.
 - (iii) *Impact on sentence of offender's dependency*
Many offenders convicted of acquisitive crimes are motivated by an addiction, often to drugs, alcohol or gambling. This does not mitigate the seriousness of the offence, but an offender's dependency may properly influence the type of sentence imposed. In particular, it may sometimes be appropriate to impose a drug rehabilitation requirement or an alcohol treatment requirement as part of a community order or a suspended sentence order in an attempt to break the cycle of addiction and offending, even if an immediate custodial sentence would otherwise be warranted.¹

¹ See para.2 on p.163. The Court of Appeal gave guidance on the approach to making drug treatment and testing orders, which also applies to imposing a drug rehabilitation requirement in *Attorney General's Reference No. 64 of 2003 (Boujettif and Harrison)* [2003] EWCA Crim 2514 and *Woods and Collins* [2005] EWCA Crim 2065 summarised in the Sentencing Guidelines Council *Guideline Judgments Case Compendium* (section (A) Generic Sentencing Principles) available at: www.sentencing-guidelines.gov.uk

Triable either way:

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: 2 years

Offence seriousness (culpability and harm)

A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Single offence committed by an offender acting alone with evidence of little or no planning, goods or services worth less than £200	Band C fine	Band A fine to high level community order
Offence displaying one or more of the following: <ul style="list-style-type: none"> – offender acting in unison with others – evidence of planning – offence part of a ‘spree’ – intimidation of victim – goods or services worth £200 or more 	Medium level community order	Low level community order to 12 weeks custody

Offence seriousness (culpability and harm)

B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card

Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card – see also note (c) opposite

Consider a reduction for a guilty plea

Consider ancillary orders, including compensation

Refer to pages 168-174 for guidance on available ancillary orders

**Decide sentence
Give reasons**

Obstruct/resist a police constable in execution of duty

Police Act 1996, s.89(2)

Triable only summarily:
Maximum: Level 3 fine and/or one month

Offence seriousness (culpability and harm)

A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Failure to move when required to do so	Band A fine	Conditional discharge to band B fine
Attempt to prevent arrest or other lawful police action; or giving false details	Band B fine	Band A fine to band C fine
Several people attempting to prevent arrest or other lawful police action	Low level community order	Band C fine to medium level community order

Offence seriousness (culpability and harm)

B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

Factors indicating higher culpability	Factors indicating lower culpability
<ol style="list-style-type: none">1. Premeditated action2. Aggressive words/threats3. Aggressive group action	<ol style="list-style-type: none">1. Genuine mistake or misjudgement2. Brief incident

Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

Consider a reduction for a guilty plea

Consider ancillary orders

Refer to pages 168-174 for guidance on available ancillary orders

Decide sentence Give reasons

Triable either way:

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: 5 years

The offence of **obtaining services dishonestly** may be committed in circumstances that otherwise could be charged as an offence contrary to section 1 of the Fraud Act 2006 or may be more akin to *making off without payment*, contrary to section 3 of the Theft Act 1978. For this reason, it has not been included specifically within any of the guidelines for fraud, and one of the following approaches should be used:

- where it involves conduct which can be characterised as a fraud offence (such as obtaining credit through fraud or payment card fraud), the court should apply the guideline for the relevant type of fraud (see pages 62b-62i); or
- where the conduct could be characterised as *making off without payment* (that is, where an offender, knowing that payment on the spot for any goods supplied or service done is required or expected, dishonestly makes off without having paid and with intent to avoid payment), the guideline for that offence should be used (see pages 77-78).

Protective order, breach of – factors to take into consideration

This guideline and accompanying notes are taken from the Sentencing Guidelines Council's definitive guideline *Breach of a Protective Order*, published 7 December 2006

Aims of sentencing

- (a) The main aim of sentencing for breach of a protective order (which would have been imposed to protect a victim from future harm) should be to achieve future compliance with that order.
- (b) The court will need to assess the level of risk posed by the offender. Willingness to undergo treatment or accept help may influence sentence.

Key factors

- (i) The nature of the conduct that caused the breach of the order. In particular, whether the contact was direct or indirect, although it is important to recognise that indirect contact is capable of causing significant harm or anxiety.
- (ii) **There may be exceptional cases where the nature of the breach is particularly serious but has not been dealt with by a separate offence being charged. In these cases the risk posed by the offender and the nature of the breach will be particularly significant in determining the response.**
- (iii) The nature of the original conduct or offence is relevant in so far as it allows a judgement to be made on the level of harm caused to the victim by the breach, and the extent to which that harm was intended.
- (iv) The sentence following a breach is for the breach alone and must avoid punishing the offender again for the offence or conduct as a result of which the order was made.
- (v) It is likely that all breaches of protective orders will pass the threshold for a community sentence. Custody is the starting point where violence is used. Non-violent conduct may also cross the custody threshold where a high degree of harm or anxiety has been caused.
- (vi) Where an order was made in civil proceedings, its purpose may have been to cause the subject of the order to modify behaviour rather than to imply that the conduct was especially serious. If so, it is likely to be disproportionate to impose a custodial sentence if the breach of the order did not involve threats or violence.
- (vii) In some cases where a breach might result in a short custodial sentence but the court is satisfied that the offender genuinely intends to reform his or her behaviour and there is a real prospect of rehabilitation, the court may consider it appropriate to impose a sentence that will allow this. This may mean imposing a suspended sentence order or a community order (where appropriate with a requirement to attend an accredited domestic violence programme).

Protective order, breach of

Triable either way:

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: 5 years

Where the conduct is particularly serious, it would normally be charged as a separate offence. These starting points are based on the premise that the activity has either been prosecuted separately as an offence or is not of a character sufficient to justify prosecution of it as an offence in its own right.

Where offence committed in domestic context, refer to page 177 for guidance

Offence seriousness (culpability and harm)

A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Single breach involving no/minimal direct contact	Low level community order	Band C fine to medium level community order
More than one breach involving no/minimal contact or some direct contact	Medium level community order	Low level community order to high level community order
Single breach involving some violence and/or significant physical or psychological harm to the victim	18 weeks custody	13 to 26 weeks custody
More than one breach involving some violence and/or significant physical or psychological harm to the victim	Crown Court	26 weeks custody to Crown Court
Breach (whether one or more) involving significant physical violence and significant physical or psychological harm to the victim	Crown Court	Crown Court

Offence seriousness (culpability and harm)

B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

<p>Factors indicating higher culpability</p> <ol style="list-style-type: none"> 1. Proven history of violence or threats by the offender 2. Using contact arrangements with a child to instigate offence 3. Offence is a further breach, following earlier breach proceedings 4. Offender has history of disobedience to court orders 5. Breach committed immediately or shortly after order made <p>Factors indicating greater degree of harm</p> <ol style="list-style-type: none"> 1. Victim is particularly vulnerable 2. Impact on children 3. Victim is forced to leave home 	<p>Factors indicating lower culpability</p> <ol style="list-style-type: none"> 1. Breach occurred after long period of compliance 2. Victim initiated contact
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Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

Consider a reduction for a guilty plea

Consider ancillary orders

Refer to pages 168-174 for guidance on available ancillary orders

Decide sentence Give reasons

Public Order Act, s.2 – violent disorder

Public Order Act 1986, s.2

Triable either way:

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: 5 years

Identify dangerous offenders

This is a specified offence for the purposes of the public protection provisions in the Criminal Justice Act 2003 – refer to page 187 and consult legal adviser for guidance

Offence seriousness (culpability and harm)

A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

These offences should normally be dealt with in the Crown Court. However, there may be rare cases involving minor violence or threats of violence leading to no or minor injury, with few people involved and no weapon or missiles, in which a custodial sentence within the jurisdiction of a magistrates' court may be appropriate.

Triable either way:

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: 3 years

Identify dangerous offenders

This is a specified offence for the purposes of the public protection provisions in the Criminal Justice Act 2003 – refer to page 187 and consult legal adviser for guidance

Offence seriousness (culpability and harm)

A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Brief offence involving low-level violence, no substantial fear created	Low level community order	Band C fine to medium level community order
Degree of fighting or violence that causes substantial fear	High level community order	Medium level community order to 12 weeks custody
Fight involving a weapon/throwing objects, or conduct causing risk of serious injury	18 weeks custody	12 weeks custody to Crown Court

Offence seriousness (culpability and harm)

B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

<p>Factors indicating higher culpability</p> <ol style="list-style-type: none"> Group action Threats Lengthy incident <p>Factors indicating greater degree of harm</p> <ol style="list-style-type: none"> Vulnerable person(s) present Injuries caused Damage to property 	<p>Factors indicating lower culpability</p> <ol style="list-style-type: none"> Did not start the trouble Provocation Stopped as soon as police arrived
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Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

Consider a reduction for a guilty plea

Consider ancillary orders, including compensation and football banning order (where appropriate)

Refer to pages 168-174 for guidance on available ancillary orders

Decide sentence Give reasons

**Public Order Act, s.4 –
threatening behaviour – fear or
provocation of violence
Racially or religiously aggravated
threatening behaviour**

Public Order Act 1986, s.4

Crime and Disorder Act 1998, s.31

Threatening behaviour: triable only summarily
Maximum: Level 5 fine and/or 6 months

Racially or religiously aggravated threatening behaviour: triable either way
Maximum when tried summarily: Level 5 fine and/or 6 months
Maximum when tried on indictment: 2 years

Where offence committed in domestic context, refer to page 177 for guidance

Offence seriousness (culpability and harm)

A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Fear or threat of low level immediate unlawful violence such as push, shove or spit	Low level community order	Band B fine to medium level community order
Fear or threat of medium level immediate unlawful violence such as punch	High level community order	Low level community order to 12 weeks custody
Fear or threat of high level immediate unlawful violence such as use of weapon; missile thrown; gang involvement	12 weeks custody	6 to 26 weeks custody

Offence seriousness (culpability and harm)

**B. Consider the effect of aggravating and mitigating factors
(other than those within examples above)**

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

<p>Factors indicating higher culpability</p> <ol style="list-style-type: none"> 1. Planning 2. Offender deliberately isolates victim 3. Group action 4. Threat directed at victim because of job 5. History of antagonism towards victim <p>Factors indicating greater degree of harm</p> <ol style="list-style-type: none"> 1. Offence committed at school, hospital or other place where vulnerable persons may be present 2. Offence committed on enclosed premises such as public transport 3. Vulnerable victim(s) 4. Victim needs medical help/counselling 	<p>Factors indicating lower culpability</p> <ol style="list-style-type: none"> 1. Impulsive action 2. Short duration 3. Provocation
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**Form a preliminary view of the appropriate sentence
If offender charged and convicted of the racially or religiously
aggravated offence, increase the sentence to reflect this element**

Refer to pages 178-179 for guidance

Consider offender mitigation

Common factors are identified in the pullout card

Consider a reduction for a guilty plea

**Consider ancillary orders, including compensation and
football banning order (where appropriate)**

Refer to pages 168-174 for guidance on available ancillary orders

Decide sentence

Give reasons

**Public Order Act, s.4A –
disorderly behaviour with
intent to cause harassment,
alarm or distress**

**Racially or religiously
aggravated disorderly
behaviour with intent to cause
harassment, alarm or distress**

Disorderly behaviour with intent to cause harassment, alarm or distress: triable only summarily

Maximum: Level 5 fine and/or 6 months

Racially or religiously aggravated disorderly behaviour with intent to cause harassment etc.: triable either way

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: 2 years

Offence seriousness (culpability and harm)

A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Threats, abuse or insults made more than once but on same occasion against the same person e.g. while following down the street	Band C fine	Band B fine to low level community order
Group action or deliberately planned action against targeted victim	Medium level community order	Low level community order to 12 weeks custody
Weapon brandished or used or threats against vulnerable victim – course of conduct over longer period	12 weeks custody	High level community order to 26 weeks custody

Offence seriousness (culpability and harm)

B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

<p>Factors indicating higher culpability</p> <ol style="list-style-type: none"> 1. High degree of planning 2. Offender deliberately isolates victim <p>Factors indicating greater degree of harm</p> <ol style="list-style-type: none"> 1. Offence committed in vicinity of victim's home 2. Large number of people in vicinity 3. Actual or potential escalation into violence 4. Particularly serious impact on victim 	<p>Factors indicating lower culpability</p> <ol style="list-style-type: none"> 1. Very short period 2. Provocation
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Form a preliminary view of the appropriate sentence

If offender charged and convicted of the racially or religiously aggravated offence, increase the sentence to reflect this element

Refer to pages 178-179 for guidance

Consider offender mitigation

Common factors are identified in the pullout card

Consider a reduction for a guilty plea

Consider ancillary orders, including compensation and football banning order (where appropriate)

Refer to pages 168-174 for guidance on available ancillary orders

Decide sentence

Give reasons

**Public Order Act, s.5
– disorderly behaviour
(harassment, alarm or distress)
Racially or religiously
aggravated disorderly
behaviour**

Public Order Act 1986, s.5

Crime and Disorder Act 1998, s.31

Disorderly behaviour: triable only summarily
Maximum: Level 3 fine

Racially or religiously aggravated disorderly behaviour: triable only summarily
Maximum: Level 4 fine

Offence seriousness (culpability and harm)

A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Shouting, causing disturbance for some minutes	Band A fine	Conditional discharge to band B fine
Substantial disturbance caused	Band B fine	Band A fine to band C fine

Offence seriousness (culpability and harm)

**B. Consider the effect of aggravating and mitigating factors
(other than those within examples above)**

Common aggravating and mitigating factors are identified in the pullout card –
the following may be particularly relevant but **these lists are not exhaustive**

<p>Factors indicating higher culpability</p> <ol style="list-style-type: none"> Group action Lengthy incident <p>Factors indicating greater degree of harm</p> <ol style="list-style-type: none"> Vulnerable person(s) present Offence committed at school, hospital or other place where vulnerable persons may be present Victim providing public service 	<p>Factors indicating lower culpability</p> <ol style="list-style-type: none"> Stopped as soon as police arrived Brief/minor incident Provocation
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**Form a preliminary view of the appropriate sentence
If offender charged and convicted of the racially or religiously
aggravated offence, increase the sentence to reflect this element**

Refer to pages 178-179 for guidance

Consider offender mitigation

Common factors are identified in the pullout card

Consider a reduction for a guilty plea

**Consider ancillary orders, including compensation and
football banning order (where appropriate)**

Refer to pages 168-174 for guidance on available ancillary orders

**Decide sentence
Give reasons**

Railway fare evasion

Triable only summarily:

Maximum: Level 3 fine or 3 months (s.5(3)); level 2 fine (s.5(1))

Offence seriousness (culpability and harm)

A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Failing to produce ticket or pay fare on request	Band A fine	Conditional discharge to band B fine
Travelling on railway without having paid the fare or knowingly and wilfully travelling beyond the distance paid for, with intent to avoid payment	Band B fine	Band A fine to band C fine

Offence seriousness (culpability and harm)

B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

Factor indicating higher culpability

1. Offensive or intimidating language or behaviour towards railway staff

Factor indicating greater degree of harm

1. High level of loss caused or intended to be caused

Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

Consider a reduction for a guilty plea

Consider ancillary orders, including compensation

Refer to pages 168-174 for guidance on available ancillary orders

Decide sentence

Give reasons

School non-attendance

Education Act 1996, s.444(1) (parent fails to secure regular attendance at school of registered pupil); s.444(1A) (parent knowingly fails to secure regular attendance at school of registered pupil)

Triable only summarily

Maximum: Level 3 fine (s.444(1)); level 4 fine and/or 3 months (s.444(1A))

Offence seriousness (culpability and harm)

A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Short period following previous good attendance (s.444(1))	Band A fine	Conditional discharge to band A fine
Erratic attendance for long period (s.444(1))	Band B fine	Band B fine to Band C fine
Colluding in and condoning non-attendance or deliberately instigating non-attendance (s.444(1A))	Medium level community order	Low level community order to high level community order

Offence seriousness (culpability and harm)

B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

<p>Factors indicating higher culpability</p> <ol style="list-style-type: none"> 1. Parental collusion (s.444(1) only) 2. Lack of parental effort to ensure attendance (s.444(1) only) 3. Threats to teachers and/or officials 4. Refusal to co-operate with school and/or officials <p>Factors indicating greater degree of harm</p> <ol style="list-style-type: none"> 1. More than one child 2. Harmful effect on other children in family 	<p>Factors indicating lower culpability</p> <ol style="list-style-type: none"> 1. Parent unaware of child's whereabouts 2. Parent tried to ensure attendance 3. Parent concerned by child's allegations of bullying/unable to get school to address bullying
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Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

Consider a reduction for a guilty plea

Consider ancillary orders, including parenting order

Refer to pages 168-174 for guidance on available ancillary orders

Decide sentence Give reasons

Sex offenders register – fail to comply with notification requirements

Triable either way:

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: 5 years

<p>Offence seriousness (culpability and harm) A. Identify the appropriate starting point Starting points based on first time offender (see note below) pleading not guilty</p>		
Examples of nature of activity	Starting point	Range
Negligent or inadvertent failure to comply with requirements	Medium level community order	Band C fine to high level community order
Deliberate failure to comply with requirements OR Supply of information known to be false	6 weeks custody	High level community order to 26 weeks custody
Conduct as described in box above AND Long period of non-compliance OR Attempts to avoid detection	18 weeks custody	6 weeks custody to Crown Court
<p>Offence seriousness (culpability and harm) B. Consider the effect of aggravating and mitigating factors (other than those within examples above) Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but these lists are not exhaustive</p>		
<p>Factor indicating higher culpability 1. Long period of non-compliance (where not in the examples above)</p> <p>Factor indicating greater degree of harm 1. Alarm or distress caused to victim 2. Particularly serious original offence</p>	<p>Factor indicating lower culpability 1. Genuine misunderstanding</p>	
<p>Form a preliminary view of the appropriate sentence, then consider offender mitigation Common factors are identified in the pullout card</p>		
<p>Consider a reduction for a guilty plea</p>		
<p>Consider ancillary orders Refer to pages 168-174 for guidance on available ancillary orders</p>		
<p>Decide sentence Give reasons</p>		

Note

An offender convicted of this offence will always have at least one relevant previous conviction for the offence that resulted in the notification requirements being imposed. The starting points and ranges take this into account; any other previous convictions should be considered in the usual way – see pages 17 and 145.

Sexual activity in a public lavatory

Sexual Offences Act 2003, s.71

Triable only summarily

Maximum: Level 5 fine and/or 6 months

This guideline and accompanying notes are taken from the Sentencing Guidelines Council's definitive guideline *Sexual Offences Act 2003*, published 30 April 2007

Key factors

- (a) This offence is committed where an offender intentionally engages in sexual activity in a public lavatory. It was introduced to give adults and children the freedom to use public lavatories for the purpose for which they are designed, without the fear of being an unwilling witness to overtly sexual behaviour of a kind that most people would not expect to be conducted in public. It is primarily a public order offence rather than a sexual offence.
- (b) When dealing with a repeat offender, the starting point should be a low level community order with a range of Band C fine to medium level community order. The presence of aggravating factors may suggest that a sentence above the range is appropriate.
- (c) This guideline may be relevant by way of analogy to conduct charged as the common law offence of outraging public decency; the offence is triable either way and has a maximum penalty of a level 5 fine and/or 6 months imprisonment when tried summarily.

Offence seriousness (culpability and harm)

A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Basic offence as defined in the Act, assuming no aggravating or mitigating factors	Band C fine	Band C fine
Offence with aggravating factors	Low level community order	Band C fine to medium level community order

Offence seriousness (culpability and harm)

B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

Factors indicating higher culpability 1. Intimidating behaviour/threats of violence to member(s) of the public 2. Blatant behaviour	
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Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

Consider a reduction for a guilty plea

Consider ancillary orders, including compensation

Refer to pages 168-174 for guidance on available ancillary orders

Decide sentence Give reasons

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Sexual assault

Sexual Offences Act 2003, ss.3 and 7
(sexual assault of child under 13)

Triable either way:

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: 10 years (s.3), 14 years (s.7)

This guideline is taken from the Sentencing Guidelines Council's definitive guideline *Sexual Offences Act 2003*, published 30 April 2007

Identify dangerous offenders

These are serious offences for the purposes of the public protection provisions in the Criminal Justice Act 2003 – refer to page 187 and consult legal adviser for guidance

Offence seriousness (culpability and harm)

A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Contact between part of offender's body (other than the genitalia) with part of the victim's body (other than the genitalia)	26 weeks custody if the victim is under 13 Medium level community order if the victim is aged 13 or over	4 weeks custody to Crown Court Band C fine to 6 weeks custody
Contact between naked genitalia of offender and another part of victim's body Contact with naked genitalia of victim by offender using part of his or her body other than the genitalia, or an object Contact between either the clothed genitalia of offender and naked genitalia of victim or naked genitalia of offender and clothed genitalia of victim	Crown Court if the victim is under 13 Crown Court if the victim is aged 13 or over	Crown Court 26 weeks custody to Crown Court
Contact between naked genitalia of offender and naked genitalia, face or mouth of the victim	Crown Court	Crown Court

Offence seriousness (culpability and harm)
B. Consider the effect of aggravating and mitigating factors
(Other than those within examples opposite)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

Factors indicating higher culpability

1. Background of intimidation or coercion
2. Use of drugs, alcohol or other substance to facilitate the offence
3. Threats to prevent the victim reporting the incident
4. Abduction or detention
5. Offender aware that he or she is suffering from a sexually transmitted infection
6. Prolonged activity or contact

Factors indicating greater degree of harm

1. Offender ejaculated or caused victim to ejaculate
2. Physical harm caused

Factors indicating lower culpability

1. Youth and immaturity of the offender
2. Minimal or fleeting contact

Where the victim is aged 16 or over

3. Victim engaged in consensual activity with the offender on the same occasion and immediately before the offence

Where the victim is under 16

4. Sexual activity between two children (one of whom is the offender) was mutually agreed and experimental

Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

Consider a reduction for a guilty plea

Consider ancillary orders, including compensation

Refer to pages 168-174 for guidance on available ancillary orders

Decide sentence
Give reasons

Note

- (a) In accordance with section 80 and schedule 3 of the Sexual Offences Act 2003, automatic notification requirements apply upon conviction to an offender aged 18 or over where:
- (1) the victim was under 18; or
 - (2) a term of imprisonment or a community sentence of at least 12 months is imposed.

Social security benefit, false statement/representation to obtain

Social Security Administration Act 1992, s.112 (makes statement/representation known to be false)

Triable only summarily:

Maximum: Level 5 fine and/or 3 months

For offences under s.111A, refer to guideline *Fraud – banking and insurance fraud and obtaining credit through fraud, benefit fraud and revenue fraud* at pages 62b-62e.

Offence seriousness (culpability and harm)

A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Claim fraudulent from the start, up to £5,000 obtained	Medium level community order	Band B fine to high level community order

Offence seriousness (culpability and harm)

B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

<p>Factors indicating higher culpability</p> <ol style="list-style-type: none"> 1. Offending carried out over a long period 2. Offender acting in unison with one or more others 3. Planning 4. Offender motivated by greed or desire to live beyond his/her means 5. False identities or other personal details used 6. False or forged documents used 7. Official documents altered or falsified 	<p>Factors indicating lower culpability</p> <ol style="list-style-type: none"> 1. Pressurised by others 2. Claim initially legitimate <p>Factor indicating lesser degree of harm</p> <ol style="list-style-type: none"> 1. Voluntary repayment of amounts overpaid
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Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

Consider a reduction for a guilty plea

Consider ancillary orders, including compensation

Refer to pages 168-174 for guidance on available ancillary orders

Decide sentence

Give reasons

Note

A maximum of £5,000 compensation may be imposed for each offence of which the offender has been convicted. The above guidelines have been drafted on the assumption that, in most cases, the Department for Work and Pensions will take separate steps to recover the overpayment.

Triable either way:

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: 7 years

Refer to guideline *Fraud – banking and insurance fraud and obtaining credit through fraud, benefit fraud and revenue fraud* at pages 62b-62e

Triable only summarily:
Maximum: Level 4 fine

Offence seriousness (culpability and harm)

A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Licensed taxi-driver touting for trade (i.e. making approach rather than waiting for a person to initiate hiring)	Band A fine	Conditional discharge to band A fine and consider disqualification 1-3 months
PHV licence held but touting for trade rather than being booked through an operator; an accomplice to touting	Band B fine	Band A fine to band C fine and consider disqualification 3-6 months
No PHV licence held	Band C fine	Band B fine to Band C fine and disqualification 6-12 months

Note: refer to page 150 for approach to fines for offences committed for commercial purposes

Offence seriousness (culpability and harm)

B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

<p>Factors indicating higher culpability</p> <ol style="list-style-type: none"> Commercial business/large scale operation No insurance/invalid insurance No driving licence and/or no MOT Vehicle not roadworthy <p>Factors indicating greater degree of harm</p> <ol style="list-style-type: none"> Deliberately diverting trade from taxi rank PHV licence had been refused/offender ineligible for licence 	<p>Factor indicating lower culpability</p> <ol style="list-style-type: none"> Providing a service when no licensed taxi available
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Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

Consider a reduction for a guilty plea

Consider ancillary orders

Refer to pages 168-174 for guidance on available ancillary orders

Consider disqualification from driving and deprivation of property

Decide sentence

Give reasons

Theft – general principles

1. The guideline *Theft and Burglary in a building other than a dwelling*, published by the Sentencing Guidelines Council 9 December 2008 covers four forms of theft. However, the principles relating to the assessment of seriousness in the guideline are of general application and are likely to be of assistance where a court is sentencing for a form of theft not covered by a specific guideline. These are summarised below for ease of reference.

Assessing seriousness

(i) Culpability and harm

2. As it is an essential element of the offence of theft that the offender acted dishonestly, an offender convicted of theft will have a high level of culpability. Even so, the precise level of culpability will vary according to factors such as the offender's motivation, whether the offence was planned or spontaneous and whether the offender was in a position of trust. An offence will be aggravated where there is evidence of planning.
3. When assessing the harm caused by a theft offence, the starting point is normally based on the loss suffered by the victim. Whilst, in general, the greater the loss, the more serious the offence, the monetary value of the loss may not reflect the full extent of the harm caused by the offence. The court should also take into account the impact of the offence on the victim (which may be significantly greater than the monetary value of the loss; this may be particularly important where the value of the loss is high in proportion to the victim's financial circumstances even though relatively low in absolute terms), any harm to persons other than the direct victim, and any harm in the form of public concern or erosion of public confidence.

(ii) Aggravating and mitigating factors

4. The most common factors that are likely to aggravate an offence of theft are:

factors indicating higher culpability: planning of an offence, offenders operating in groups or gangs, and deliberate targeting of vulnerable victims

factors indicating a more than usually serious degree of harm: victim is particularly vulnerable, high level of gain from the offence, and high value (including sentimental value) of property to the victim or substantial consequential loss

(iii) Offender mitigation

5. The Council has identified the following matters of offender mitigation that might apply to offences of theft:
 - (a) *Return of stolen property* – depending on the circumstances and in particular, the voluntariness and timeliness of the return.
 - (b) *Impact on sentence of offender's dependency* – where an offence is motivated by an addiction (often to drugs, alcohol or gambling) this does not mitigate the seriousness of the offence, but a dependency may properly influence the type of sentence imposed. In particular, it may sometimes be appropriate to impose a drug rehabilitation requirement, an alcohol treatment requirement (for dependent drinkers) or an activity or supervision requirement including alcohol specific information, advice and support (for harmful and hazardous drinkers) as part of a community order or a suspended sentence order in an attempt to break the cycle of addiction and offending, even if an immediate custodial sentence would otherwise be warranted.
 - (c) *Offender motivated by desperation or need* – the fact that an offence has been committed in desperation or need arising from particular hardship may count as offender mitigation in **exceptional circumstances**.

Theft – breach of trust – factors to take into consideration

This guideline and accompanying notes are taken from the Sentencing Guidelines Council's definitive guideline *Theft and Burglary in a building other than a dwelling*, published 9 December 2008

Key factors

- (a) When assessing the harm caused by this offence, the starting point should be the loss suffered by the victim. In general, the greater the loss, the more serious the offence. However, the monetary value of the loss may not reflect the full extent of the harm caused by the offence. The court should also take into account the impact of the offence on the victim (which may be significant and disproportionate to the value of the loss having regard to their financial circumstances), any harm to persons other than the direct victim, and any harm in the form of public concern or erosion of public confidence.
- (b) In general terms, the seriousness of the offence will increase in line with the level of trust breached. The extent to which the nature and degree of trust placed in an offender should be regarded as increasing seriousness will depend on a careful assessment of the circumstances of each individual case, including the type and terms of the relationship between the offender and victim.
- (c) The concept of breach of trust for the purposes of the offence of theft includes employer/employee relationships and those between a professional adviser and client. It also extends to relationships in which a person is in a position of authority in relation to the victim or would be expected to have a duty to protect the interests of the victim, such as medical, social or care workers. The targeting of a vulnerable victim by an offender through a relationship or position of trust will indicate a higher level of culpability.
- (d) The Council has identified the following matters of offender mitigation which may be relevant to this offence:
- (i) *Return of stolen property*
Whether and the degree to which the return of stolen property constitutes a matter of offender mitigation will depend on an assessment of the circumstances and, in particular, the voluntariness and timeliness of the return.
 - (ii) *Impact on sentence of offender's dependency*
Where an offence is motivated by an addiction (often to drugs, alcohol or gambling) this does not mitigate the seriousness of the offence, but a dependency may properly influence the type of sentence imposed. In particular, it may sometimes be appropriate to impose a drug rehabilitation requirement, an alcohol treatment requirement (for dependent drinkers) or an activity or supervision requirement including alcohol specific information, advice and support (for harmful and hazardous drinkers) as part of a community order or a suspended sentence order in an attempt to break the cycle of addiction and offending, even if an immediate custodial sentence would otherwise be warranted.
 - (iii) *Offender motivated by desperation or need*
The fact that an offence has been committed in desperation or need arising from particular hardship may count as offender mitigation in **exceptional circumstances**.
 - (iv) *Inappropriate degree of trust or responsibility*
The fact that an offender succumbed to temptation having been placed in a position of trust or given responsibility to an inappropriate degree may be regarded as offender mitigation.
 - (v) *Voluntary cessation of offending*
The fact that an offender voluntarily ceased offending before being discovered does not reduce the seriousness of the offence. However, if the claim to have stopped offending is genuine, it may constitute offender mitigation, particularly if it is evidence of remorse.
 - (vi) *Reporting an undiscovered offence*
Where an offender brings the offending to the attention of his or her employer or the authorities, this may be treated as offender mitigation.
- (f) In many cases of theft in breach of trust, termination of an offender's employment will be a natural consequence of committing the offence. Other than in the most exceptional of circumstances, loss of employment and any consequential hardship should not constitute offender mitigation.
- (g) Where a court is satisfied that a custodial sentence is appropriate for an offence of theft in breach of trust, consideration should be given to whether that sentence can be suspended in accordance with the criteria in the Council guideline *New Sentences: Criminal Justice Act 2003*. A suspended sentence may be particularly appropriate where this would allow for reparation to be made either to the victim or to the community at large.

Triable either way:

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: 7 years

Offence seriousness (culpability and harm)

A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Theft of less than £2,000	Medium level community order	Band B fine to 26 weeks custody
Theft of £2,000 or more but less than £20,000 OR Theft of less than £2,000 in breach of a high degree of trust	18 weeks custody	High level community order to Crown Court
Theft of £20,000 or more OR Theft of £2,000 or more in breach of a high degree of trust	Crown Court	Crown Court

Offence seriousness (culpability and harm)

B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

<p>Factors indicating higher culpability</p> <ol style="list-style-type: none"> 1. Long course of offending 2. Suspicion deliberately thrown on others 3. Offender motivated by intention to cause harm or out of revenge 	
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Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card – see also note (d) opposite

Consider a reduction for a guilty plea

Consider ancillary orders, including compensation

Refer to pages 168-174 for guidance on available ancillary orders

**Decide sentence
Give reasons**

Theft – dwelling – factors to take into consideration

This guideline and accompanying notes are taken from the Sentencing Guidelines Council's definitive guideline *Theft and Burglary in a building other than a dwelling*, published 9 December 2008

Key factors

- (a) The category of theft in a dwelling covers the situation where a theft is committed by an offender who is present in a dwelling with the authority of the owner or occupier. Examples include thefts by lodgers or visitors to the victim's residence, such as friends, relatives or salespeople. Such offences involve a violation of the privacy of the victim's home and constitute an abuse of the victim's trust. Where an offender enters a dwelling as a trespasser in order to commit theft, his or her conduct will generally constitute the more serious offence of burglary; **this guideline does not apply where the offender has been convicted of burglary – see pages 34-35 for guidance.**
- (b) The starting points and sentencing ranges in this guideline are based on the assumption that the offender was motivated by greed or a desire to live beyond his or her means. To avoid double counting, such a motivation should not be treated as a factor that increases culpability.
- (c) For the purpose of this guideline, a 'vulnerable victim' is a person targeted by the offender because it is anticipated that he or she is unlikely or unable to resist the theft. The exploitation of a vulnerable victim indicates a high level of culpability and will influence the category of seriousness into which the offence falls.
- (d) The guideline is based on the assumption that most thefts in a dwelling do not involve property of high monetary value or of high value to the victim. Where the property stolen is of high monetary value or of high value (including sentimental value) to the victim, the appropriate sentence may be beyond the range into which the offence otherwise would fall. For the purpose of this form of theft, property worth more than £2,000 should generally be regarded as being of 'high monetary value', although this will depend on an assessment of all the circumstances of the particular case.
- (e) A sentence beyond the range into which the offence otherwise would fall may also be appropriate where the effect on the victim is particularly severe or where substantial consequential loss results (such as where the theft of equipment causes serious disruption to the victim's life or business).
- (f) The Council has identified the following matters of offender mitigation which may be relevant to this offence:
- (i) *Return of stolen property*
Whether and the degree to which the return of stolen property constitutes a matter of offender mitigation will depend on an assessment of the circumstances and, in particular, the voluntariness and timeliness of the return.
 - (ii) *Impact on sentence of offender's dependency*
Where an offence is motivated by an addiction (often to drugs, alcohol or gambling) this does not mitigate the seriousness of the offence, but a dependency may properly influence the type of sentence imposed. In particular, it may sometimes be appropriate to impose a drug rehabilitation requirement, an alcohol treatment requirement (for dependent drinkers) or an activity or supervision requirement including alcohol specific information, advice and support (for harmful and hazardous drinkers) as part of a community order or a suspended sentence order in an attempt to break the cycle of addiction and offending, even if an immediate custodial sentence would otherwise be warranted.
 - (iii) *Offender motivated by desperation or need*
The fact that an offence has been committed in desperation or need arising from particular hardship may count as offender mitigation in **exceptional circumstances.**

Theft – dwelling

Triable either way:

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: 7 years

Offence seriousness (culpability and harm)

A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Where the effect on the victim is particularly severe, the stolen property is of high value (as defined in note (d) opposite), or substantial consequential loss results, a sentence higher than the range into which the offence otherwise would fall may be appropriate		
Theft in a dwelling not involving vulnerable victim	Medium level community order	Band B fine to 18 weeks custody
Theft from a vulnerable victim (as defined in note (c) opposite)	18 weeks custody	High level community order to Crown Court
Theft from a vulnerable victim (as defined in note (c) opposite) involving intimidation or the use or threat of force (falling short of robbery) or the use of deception	Crown Court	Crown Court

Offence seriousness (culpability and harm)

B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

<p>Factors indicating higher culpability</p> <ol style="list-style-type: none"> Offender motivated by intention to cause harm or out of revenge <p>Factors indicating greater degree of harm</p> <ol style="list-style-type: none"> Intimidation or face-to-face confrontation with victim [except where this raises the offence into a higher sentencing range] Use of force, or threat of force, against victim (not amounting to robbery) [except where this raises the offence into a higher sentencing range] Use of deception [except where this raises the offence into a higher sentencing range] Offender takes steps to prevent the victim from reporting the crime or seeking help 	
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Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card – see also note (f) opposite

Consider a reduction for a guilty plea

Consider ancillary orders, including compensation

Refer to pages 168-174 for guidance on available ancillary orders

Decide sentence Give reasons

Theft – person – factors to take into consideration

This guideline and accompanying notes are taken from the Sentencing Guidelines Council's definitive guideline *Theft and Burglary in a building other than a dwelling*, published 9 December 2008

Key factors

- (a) Theft from the person may encompass conduct such as 'pick-pocketing', where the victim is unaware that the property is being stolen, as well as the snatching of handbags, wallets, jewellery and mobile telephones from the victim's possession or from the vicinity of the victim. The offence constitutes an invasion of the victim's privacy and may cause the victim to experience distress, fear and inconvenience either during or after the event. While in some cases the conduct may be similar, **this guideline does not apply where the offender has been convicted of robbery; sentencers should instead refer to the Council guideline on robbery.**
- (b) The starting points and sentencing ranges in this guideline are based on the assumption that the offender was motivated by greed or a desire to live beyond his or her means. To avoid double counting, such a motivation should not be treated as a factor that increases culpability.
- (c) For the purpose of this guideline, a 'vulnerable victim' is a person targeted by the offender because it is anticipated that he or she is unlikely or unable to resist the theft. Young or elderly persons, or those with disabilities may fall into this category. The exploitation of a vulnerable victim indicates a high level of culpability and will influence the category of seriousness into which the offence falls.
- (d) Offences of this type will be aggravated where there is evidence of planning, such as where tourists are targeted because of their unfamiliarity with an area and a perception that they will not be available to give evidence.
- (e) The guideline is based on the assumption that most thefts from the person do not involve property of high monetary value or of high value to the victim. Where the stolen property is of high monetary value or of high value (including sentimental value) to the victim, the appropriate sentence may be beyond the range into which the offence otherwise would fall. For the purposes of this form of theft, 'high monetary value' is defined as more than £2,000.
- (f) A sentence beyond the range into which the offence otherwise would fall may also be appropriate where the effect on the victim is particularly severe or where substantial consequential loss results (such as where the theft of equipment causes serious disruption to the victim's life or business).
- (g) The Council has identified the following matters of offender mitigation which may be relevant to this offence:
- (i) *Return of stolen property*
Whether and the degree to which the return of stolen property constitutes a matter of offender mitigation will depend on an assessment of the circumstances and, in particular, the voluntariness and timeliness of the return.
 - (ii) *Impact on sentence of offender's dependency*
Where an offence is motivated by an addiction (often to drugs, alcohol or gambling) this does not mitigate the seriousness of the offence, but a dependency may properly influence the type of sentence imposed. In particular, it may sometimes be appropriate to impose a drug rehabilitation requirement, an alcohol treatment requirement (for dependent drinkers) or an activity or supervision requirement including alcohol specific information, advice and support (for harmful and hazardous drinkers) as part of a community order or a suspended sentence order in an attempt to break the cycle of addiction and offending, even if an immediate custodial sentence would otherwise be warranted.
 - (iii) *Offender motivated by desperation or need*
The fact that an offence has been committed in desperation or need arising from particular hardship may count as offender mitigation in **exceptional circumstances.**

Theft – person

Triable either way:

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: 7 years

Offence seriousness (culpability and harm)

A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Where the effect on the victim is particularly severe, the stolen property is of high value (as defined in note (f) opposite), or substantial consequential loss results, a sentence higher than the range into which the offence otherwise would fall may be appropriate		
Theft from the person not involving vulnerable victim	Medium level community order	Band B fine to 18 weeks custody
Theft from a vulnerable victim (as defined in note (c) opposite)	18 weeks custody	High level community order to Crown Court
Theft involving the use or threat of force (falling short of robbery) against a vulnerable victim (as defined in note (c) opposite)	Crown Court	Crown Court

Offence seriousness (culpability and harm)

B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

<p>Factors indicating higher culpability</p> <ol style="list-style-type: none"> Offender motivated by intention to cause harm or out of revenge <p>Factors indicating greater degree of harm</p> <ol style="list-style-type: none"> Intimidation or face-to-face confrontation with victim [except where this raises the offence into a higher sentencing range] Use of force, or threat of force, against victim (not amounting to robbery) [except where this raises the offence into a higher sentencing range] High level of inconvenience caused to victim, e.g. replacing house keys, credit cards etc 	
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Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card – see also note (g) opposite

Consider a reduction for a guilty plea

Consider ancillary orders, including compensation

Refer to pages 168-174 for guidance on available ancillary orders

Decide sentence Give reasons

Theft – shop – factors to take into consideration

This guideline and accompanying notes are taken from the Sentencing Guidelines Council's definitive guideline *Theft and Burglary in a building other than a dwelling*, published 9 December 2008

Key factors

- (a) The circumstances of this offence can vary significantly. At the least serious end of the scale are thefts involving low value goods, no (or little) planning and no violence or damage; a non-custodial sentence will usually be appropriate for a first time offender. At the higher end of the spectrum are thefts involving organised gangs or groups or the threat or use of force and a custodial starting point will usually be appropriate.
- (b) The starting points and sentencing ranges in this guideline are based on the assumption that the offender was motivated by greed or a desire to live beyond his or her means. To avoid double counting, such a motivation should not be treated as a factor that increases culpability.
- (c) When assessing the level of harm, the circumstances of the retailer are a proper consideration; a greater level of harm may be caused where the theft is against a small retailer.
- (d) Retailers may suffer additional loss as a result of this type of offending such as the cost of preventative security measures, higher insurance premiums and time spent by staff dealing with the prosecution of offenders. However, the seriousness of an individual case must be judged on its own dimension of harm and culpability and the sentence on an individual offender should not be increased to reflect the harm caused to retailers in general by the totality of this type of offending.
- (e) Any recent previous convictions for theft and dishonesty offences will need to be taken into account in sentencing. Where an offender demonstrates a level of 'persistent' or 'seriously persistent' offending, the community and custody thresholds may be crossed even though the other characteristics of the offence would otherwise warrant a lesser sentence.
- (f) The list of aggravating and mitigating factors on the pullout card identifies high value as an aggravating factor in property offences. In cases of theft from a shop, theft of high value goods may be associated with other aggravating factors such as the degree of planning, professionalism and/or operating in a group, and care will need to be taken to avoid double counting. Deliberately targeting high value goods will always make an offence more serious.
- (g) The Council has identified the following matters of offender mitigation which may be relevant to this offence:
 - (i) *Return of stolen property*
Whether and the degree to which the return of stolen property constitutes a matter of offender mitigation will depend on an assessment of the circumstances and, in particular, the voluntariness and timeliness of the return.
 - (ii) *Impact on sentence of offender's dependency*
Where an offence is motivated by an addiction (often to drugs, alcohol or gambling) this does not mitigate the seriousness of the offence, but a dependency may properly influence the type of sentence imposed. In particular, it may sometimes be appropriate to impose a drug rehabilitation requirement, an alcohol treatment requirement (for dependent drinkers) or an activity or supervision requirement including alcohol specific information, advice and support (for harmful and hazardous drinkers) as part of a community order or a suspended sentence order in an attempt to break the cycle of addiction and offending, even if an immediate custodial sentence would otherwise be warranted.
 - (iii) *Offender motivated by desperation or need*
The fact that an offence has been committed in desperation or need arising from particular hardship may count as offender mitigation in **exceptional circumstances**.

Triable either way:

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: 7 years

Offence seriousness (culpability and harm)

A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Little or no planning or sophistication and Goods stolen of low value	Band B fine	Conditional discharge to low level community order
Low level intimidation or threats or Some planning e.g. a session of stealing on the same day or going equipped or Some related damage	Low level community order	Band B fine to medium level community order
Significant intimidation or threats or Use of force resulting in slight injury or Very high level of planning or Significant related damage	6 weeks custody	High level community order to Crown Court
Organised gang/group and Intimidation or the use or threat of force (short of robbery)	Crown Court	Crown Court

Offence seriousness (culpability and harm)

B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

<p>Factor indicating higher culpability</p> <ol style="list-style-type: none"> 1. Child accompanying offender is involved or aware of theft 2. Offender is subject to a banning order that includes the store targeted 3. Offender motivated by intention to cause harm or out of revenge 4. Professional offending <p>Factors indicating greater degree of harm</p> <ol style="list-style-type: none"> 1. Victim particularly vulnerable (e.g. small independent shop) 2. Offender targeted high value goods 	
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Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card – see also note (g) opposite

Consider a reduction for a guilty plea

Consider ancillary orders, including compensation

Refer to pages 168-174 for guidance on available ancillary orders

**Decide sentence
Give reasons**

Triable either way:

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: 10 years

Where offence committed in domestic context, refer to page 177 for guidance

Identify dangerous offenders

This is a serious offence for the purposes of the public protection provisions in the Criminal Justice Act 2003 – refer to page 187 and consult legal adviser for guidance

Offence seriousness (culpability and harm)

A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
One threat uttered in the heat of the moment, no more than fleeting impact on victim	Medium level community order	Low level community order to high level community order
Single calculated threat or victim fears that threat will be carried out	12 weeks custody	6 to 26 weeks custody
Repeated threats or visible weapon	Crown Court	Crown Court

Offence seriousness (culpability and harm)

B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

<p>Factor indicating higher culpability</p> <ol style="list-style-type: none"> 1. Planning 2. Offender deliberately isolates victim 3. Group action 4. Threat directed at victim because of job 5. History of antagonism towards victim <p>Factors indicating greater degree of harm</p> <ol style="list-style-type: none"> 1. Vulnerable victim 2. Victim needs medical help/counselling 	<p>Factor indicating lower culpability</p> <ol style="list-style-type: none"> 1. Provocation
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Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

Consider a reduction for a guilty plea

Consider ancillary orders, including compensation and football banning order (where appropriate)

Refer to pages 168-174 for guidance on available ancillary orders

Decide sentence Give reasons

Trade mark, unauthorised use of etc.

Triable either way:

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: 10 years

Offence seriousness (culpability and harm)

A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Small number of counterfeit items	Band C fine	Band B fine to low level community order
Larger number of counterfeit items but no involvement in wider operation	Medium level community order, plus fine*	Low level community order to 12 weeks custody, plus fine*
High number of counterfeit items or involvement in wider operation e.g. manufacture or distribution	12 weeks custody	6 weeks custody to Crown Court
Central role in large-scale operation	Crown Court	Crown Court

* This may be an offence for which it is appropriate to combine a fine with a community order. Consult your legal adviser for further guidance.

Offence seriousness (culpability and harm)

B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

<p>Factors indicating higher culpability</p> <ol style="list-style-type: none"> 1. High degree of professionalism 2. High level of profit <p>Factor indicating greater degree of harm</p> <ol style="list-style-type: none"> 1. Purchasers at risk of harm e.g. from counterfeit drugs 	<p>Factor indicating lower culpability</p> <ol style="list-style-type: none"> 1. Mistake or ignorance about provenance of goods
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Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

Consider a reduction for a guilty plea

Consider ancillary orders

Refer to pages 168-174 for guidance on available ancillary orders

Consider ordering forfeiture and destruction of the goods

Decide sentence Give reasons

Triable only summarily:
Maximum: Level 3 fine

Offence seriousness (culpability and harm)

A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Up to 6 months unlicensed use	Band A fine	Band A fine
Over 6 months unlicensed use	Band B Fine	Band A fine to band B fine

Offence seriousness (culpability and harm)

B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

Factors indicating lower culpability

1. Accidental oversight or belief licence held
2. Confusion of responsibility
3. Licence immediately obtained

Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

Consider a reduction for a guilty plea

Consider ancillary orders

Refer to pages 168-174 for guidance on available ancillary orders

Decide sentence

Give reasons

Triable either way:

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: 7 years

Refer to guideline *Fraud – banking and insurance fraud and obtaining credit through fraud, benefit fraud and revenue fraud* at pages 62b-62e

Triable only summarily:

Maximum: Level 4 fine and/or 3 months

Offence seriousness (culpability and harm)

A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Trying door handles; no entry gained to vehicle; no damage caused	Band C fine	Band A fine to low level community order
Entering vehicle, little or no damage caused	Medium level community order	Band C fine to high level community order
Entering vehicle, with damage caused	High level community order	Medium level community order to 12 weeks custody

Offence seriousness (culpability and harm)

B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

<p>Factor indicating higher culpability</p> <p>1. Targeting vehicle in dark/isolated location</p> <p>Factors indicating greater degree of harm</p> <p>1. Emergency services vehicle</p> <p>2. Disabled driver's vehicle</p> <p>3. Part of series</p>	
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Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

Consider a reduction for a guilty plea

Consider ancillary orders, including compensation

Refer to pages 168-174 for guidance on available ancillary orders

Consider disqualification from driving

Decide sentence

Give reasons

Vehicle licence/registration fraud

Triable either way:

Maximum when tried summarily: Level 5 fine

Maximum when tried on indictment: 2 years

Offence seriousness (culpability and harm)

A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Use of unaltered licence from another vehicle	Band B fine	Band B fine
Forged licence bought for own use, or forged/ altered for own use	Band C fine	Band C fine
Use of number plates from another vehicle; or Licence/number plates forged or altered for sale to another	High level community order (in Crown Court)	Medium level community order to Crown Court (Note: community order and custody available only in Crown Court)

Offence seriousness (culpability and harm)

B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

<p>Factors indicating higher culpability</p> <ol style="list-style-type: none"> 1. LGV, PSV, taxi etc. 2. Long-term fraudulent use <p>Factors indicating greater degree of harm</p> <ol style="list-style-type: none"> 1. High financial gain 2. Innocent victim deceived 3. Legitimate owner inconvenienced 	<p>Factors indicating lower culpability</p> <ol style="list-style-type: none"> 1. Licence/registration mark from another vehicle owned by defendant 2. Short-term use
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Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

Consider a reduction for a guilty plea

Consider ancillary orders

Refer to pages 168-174 for guidance on available ancillary orders

Consider disqualification from driving and deprivation of property (including vehicle)

Decide sentence

Give reasons

Triable only summarily:

Maximum: Level 5 fine and/or 6 months

May disqualify (no points available)

Offence seriousness (culpability and harm)

A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Exceeding authorised use of e.g. employer's or relative's vehicle; retention of hire car beyond return date	Low level community order	Band B fine to medium level community order
As above with damage caused to lock/ignition; OR Stranger's vehicle involved but no damage caused	Medium level community order	Low level community order to high level community order
Taking vehicle from private premises; OR Causing damage to e.g. lock/ignition of stranger's vehicle	High level community order	Medium level community order to 26 weeks custody

Offence seriousness (culpability and harm)

B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

Factors indicating greater degree of harm <ol style="list-style-type: none"> 1. Vehicle later burnt 2. Vehicle belonging to elderly/disabled person 3. Emergency services vehicle 4. Medium to large goods vehicle 5. Passengers carried 	Factor indicating lower culpability <ol style="list-style-type: none"> 1. Misunderstanding with owner Factor indicating lesser degree of harm <ol style="list-style-type: none"> 1. Offender voluntarily returned vehicle to owner
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Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

Consider a reduction for a guilty plea

Consider ancillary orders, including compensation

Refer to pages 168-174 for guidance on available ancillary orders

Consider disqualification from driving

Decide sentence

Give reasons

Vehicle taking (aggravated)
Damage caused to property other than the vehicle in accident or damage caused to the vehicle

Triable either way (triable only summarily if damage under £5,000):
 Maximum when tried summarily: Level 5 fine and/or 6 months
 Maximum when tried on indictment: 2 years

- Must endorse and disqualify for at least 12 months
- Must disqualify for **at least** 2 years if offender has had two or more disqualifications for periods of 56 days or more in preceding 3 years – **refer to page 184 and consult your legal adviser for further guidance**

If there is a delay in sentencing after conviction, consider interim disqualification

Offence seriousness (culpability and harm)		
A. Identify the appropriate starting point		
Starting points based on first time offender pleading not guilty		
Examples of nature of activity	Starting point	Range
Exceeding authorised use of e.g. employer's or relative's vehicle; retention of hire car beyond return date; minor damage to taken vehicle	Medium level community order	Low level community order to high level community order
Greater damage to taken vehicle and/or moderate damage to another vehicle and/or property	High level community order	Medium level community order to 12 weeks custody
Vehicle taken as part of burglary or from private premises; severe damage	18 weeks custody	12 to 26 weeks custody (Crown Court if damage over £5,000)

Offence seriousness (culpability and harm)	
B. Consider the effect of aggravating and mitigating factors (other than those within examples above)	
Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but these lists are not exhaustive	
<p>Factors indicating higher culpability</p> <ol style="list-style-type: none"> 1. Vehicle deliberately damaged/destroyed 2. Offender under influence of alcohol/drugs <p>Factors indicating greater degree of harm</p> <ol style="list-style-type: none"> 1. Passenger(s) carried 2. Vehicle belonging to elderly or disabled person 3. Emergency services vehicle 4. Medium to large goods vehicle 5. Damage caused in moving traffic accident 	<p>Factors indicating lower culpability</p> <ol style="list-style-type: none"> 1. Misunderstanding with owner 2. Damage resulting from actions of another (where this does not provide a defence)

Form a preliminary view of the appropriate sentence, then consider offender mitigation
 Common factors are identified in the pullout card

Consider a reduction for a guilty plea

Consider ancillary orders, including compensation
 Refer to pages 168-174 for guidance on available ancillary orders

Decide sentence
Give reasons

Vehicle taking (aggravated)

Theft Act 1968, ss.12A(2)(a) and (b)

Dangerous driving or accident causing injury

Triable either way:

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: 2 years; 14 years if accident caused death

- Must endorse and disqualify for at least 12 months
- Must disqualify for **at least** 2 years if offender has had two or more disqualifications for periods of 56 days or more in preceding 3 years – **refer to page 184 and consult your legal adviser for further guidance**

If there is a delay in sentencing after conviction, consider interim disqualification

Offence seriousness (culpability and harm)

A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Taken vehicle involved in single incident of bad driving where little or no damage or risk of personal injury	High level community order	Medium level community order to 12 weeks custody
Taken vehicle involved in incident(s) involving excessive speed or showing off, especially on busy roads or in built-up area	18 weeks custody	12 to 26 weeks custody
Taken vehicle involved in prolonged bad driving involving deliberate disregard for safety of others	Crown Court	Crown Court

Offence seriousness (culpability and harm)

B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

Factors indicating higher culpability

1. Disregarding warnings of others
2. Evidence of alcohol or drugs
3. Carrying out other tasks while driving
4. Carrying passengers or heavy load
5. Tiredness
6. Trying to avoid arrest
7. Aggressive driving, such as driving much too close to vehicle in front, inappropriate attempts to overtake, or cutting in after overtaking

Factors indicating greater degree of harm

1. Injury to others
2. Damage to other vehicles or property

Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

Consider a reduction for a guilty plea

Consider ordering disqualification until appropriate driving test passed Consider ancillary orders, including compensation

Refer to pages 168-174 for guidance on available ancillary orders

Decide sentence Give reasons

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Voyeurism – factors to take into consideration

This guideline is taken from the Sentencing Guidelines Council's definitive guideline *Sexual Offences Act 2003*, published 30 April 2007

Key factors

- (a) This offence is committed where, for the purpose of obtaining sexual gratification, an offender observes a person doing a private act and knows that the other person does not consent to being observed. It may be committed in a number of ways such as by direct observation on the part of the offender, by recording someone doing a private act with the intention that the recorded image will be viewed by the offender or another person, or by installing equipment or constructing or adapting a structure with the intention of enabling the offender or another person to observe a private act. For the purposes of this offence, 'private act' means an act carried out in a place which, in the circumstances, would reasonably be expected to provide privacy and: the person's genitals, buttocks or breasts are exposed or covered only in underwear; or the person is using a lavatory; or the person is doing a sexual act that is not of a kind ordinarily done in public.
- (b) In accordance with section 80 and schedule 3 of the Sexual Offences Act 2003, automatic notification requirements apply upon conviction to an offender aged 18 or over where:
 - (1) the victim was under 18; or
 - (2) a term of imprisonment or a community sentence of at least 12 months is imposed.

Triable either way:

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: 2 years

Identify dangerous offenders

This is a specified offence for the purposes of the public protection provisions in the Criminal Justice Act 2003 – refer to page 187 and consult legal adviser for guidance

Offence seriousness (culpability and harm)

A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Basic offence as defined in the Act, assuming no aggravating or mitigating factors, e.g. the offender spies through a hole he or she has made in a changing room wall	Low level community order	Band B fine to high level community order
Offence with aggravating factors such as recording sexual activity and showing it to others	26 weeks custody	4 weeks custody to Crown Court
Offence with serious aggravating factors such as recording sexual activity and placing it on a website or circulating it for commercial gain	Crown Court	26 weeks to Crown Court

Offence seriousness (culpability and harm)

B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

<p>Factors indicating higher culpability</p> <ol style="list-style-type: none"> Threats to prevent the victim reporting an offence Recording activity and circulating pictures/videos Circulating pictures or videos for commercial gain – particularly if victim is vulnerable e.g. a child or a person with a mental or physical disorder <p>Factor indicating greater degree of harm</p> <ol style="list-style-type: none"> Distress to victim e.g. where the pictures/videos are circulated to people known to the victim 	
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Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

Consider a reduction for a guilty plea

Consider ancillary orders, including compensation

Refer to pages 168-174 for guidance on available ancillary orders

Decide sentence Give reasons

Triable either way:

Maximum when tried summarily: 6 months or level 5 fine

Maximum when tried on indictment: 5 years

Where offence committed in domestic context, refer to page 177 for guidance

Offence seriousness (culpability and harm)

A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Sudden outburst in chance encounter	6 weeks custody	Medium level community order to 18 weeks custody
Conduct amounting to a threat; staring at, approaching or following witnesses; talking about the case; trying to alter or stop evidence	18 weeks custody	12 weeks custody to Crown Court
Threats of violence to witnesses and/or their families; deliberately seeking out witnesses	Crown Court	Crown Court

Offence seriousness (culpability and harm)

B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

Factors indicating higher culpability

1. Breach of bail conditions
2. Offender involves others

Factors indicating greater degree of harm

1. Detrimental impact on administration of justice
2. Contact made at or in vicinity of victim's home

Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

Consider a reduction for a guilty plea

Consider ancillary orders, including compensation

Refer to pages 168-174 for guidance on available ancillary orders

Decide sentence Give reasons

Careless driving (drive without due care and attention)

Triable only summarily:
Maximum: Level 5 fine

Must endorse and may disqualify. If no disqualification, impose 3 – 9 points

Offence seriousness (culpability and harm) A. Identify the appropriate starting point Starting points based on first time offender pleading not guilty		
Examples of nature of activity	Starting point	Range
Momentary lapse of concentration or misjudgement at low speed	Band A fine	Band A fine 3 – 4 points
Loss of control due to speed, mishandling or insufficient attention to road conditions, or carelessly turning right across on-coming traffic	Band B fine	Band B fine 5 – 6 points
Overtaking manoeuvre at speed resulting in collision of vehicles, or driving bordering on the dangerous	Band C fine	Band C fine Consider disqualification OR 7 – 9 points

Offence seriousness (culpability and harm) B. Consider the effect of aggravating and mitigating factors (other than those within examples above) Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but these lists are not exhaustive	
Factors indicating higher culpability <ol style="list-style-type: none"> Excessive speed Carrying out other tasks while driving Carrying passengers or heavy load Tiredness Factors indicating greater degree of harm <ol style="list-style-type: none"> Injury to others Damage to other vehicles or property High level of traffic or pedestrians in vicinity Location e.g. near school when children are likely to be present 	Factors indicating lower culpability <ol style="list-style-type: none"> Minor risk Inexperience of driver Sudden change in road or weather conditions

Form a preliminary view of the appropriate sentence, then consider offender mitigation
Common factors are identified in the pullout card

Consider a reduction for guilty plea

Consider ordering disqualification until appropriate driving test passed
Consider ancillary orders, including compensation
 Refer to pages 168-174 for guidance on available ancillary orders

Decide sentence
Give reasons

Causing death by careless or inconsiderate driving – factors to take into consideration

This guideline and accompanying notes are taken from the Sentencing Guidelines Council's definitive guideline *Causing Death by Driving*, published 15 July 2008

Key factors

- (a) It is unavoidable that some cases will be on the borderline between *dangerous* and *careless* driving, or may involve a number of factors that significantly increase the seriousness of an offence. As a result, the guideline for this offence identifies three levels of seriousness, the range for the highest of which overlaps with ranges for the lower levels of seriousness for *causing death by dangerous driving*.
- (b) The three levels of seriousness are defined by the degree of carelessness involved in the standard of driving:
- the most serious level for this offence is where the offender's driving fell *not that far short of dangerous*;
 - the least serious group of offences relates to those cases where the level of culpability is low – for example in a case involving an offender who misjudges the speed of another vehicle, or turns without seeing an oncoming vehicle because of restricted visibility;
 - other cases will fall into the intermediate level.
- (c) Where the level of carelessness is low and there are no aggravating factors, even the fact that death was caused is not sufficient to justify a prison sentence.
- (d) A fine is unlikely to be an appropriate sentence for this offence; where a non-custodial sentence is considered appropriate, this should be a community order. The nature of the requirements will be determined by the purpose¹ identified by the court as of primary importance. Requirements most likely to be relevant include unpaid work requirement, activity requirement, programme requirement and curfew requirement.
- (e) Offender mitigation particularly relevant to this offence includes conduct after the offence such as where the offender gave direct, positive, assistance at the scene of a collision to victim(s). It may also include remorse – whilst it can be expected that anyone who has caused a death by driving would be remorseful, this cannot undermine its importance for sentencing purposes. It is for the court to determine whether an expression of remorse is genuine.
- (f) Where an offender has a good driving record, this is not a factor that automatically should be treated as mitigation, especially now that the presence of previous convictions is a statutory aggravating factor. However, any evidence to show that an offender has previously been an exemplary driver, for example having driven an ambulance, police vehicle, bus, taxi or similar vehicle conscientiously and without incident for many years, is a fact that the courts may well wish to take into account by way of offender mitigation. This is likely to have even greater effect where the driver is driving on public duty (for example, on ambulance, fire services or police duties) and was responding to an emergency.
- (g) Disqualification of the offender from driving and endorsement of the offender's driving licence are mandatory, and the offence carries between 3 and 11 penalty points when the court finds special reasons for not imposing disqualification. There is a discretionary power² to order an extended driving test/re-test where a person is convicted of this offence.

¹ Criminal Justice Act 2003, s.142(1)

² Road Traffic Offenders Act 1988, s.36(4)

Causing death by careless or inconsiderate driving

Triable either way:

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: 5 years

Offence seriousness (culpability and harm)

A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Careless or inconsiderate driving arising from momentary inattention with no aggravating factors	Medium level community order	Low level community order to high level community order
Other cases of careless or inconsiderate driving	Crown Court	High level community order to Crown Court
Careless or inconsiderate driving falling not far short of dangerous driving	Crown Court	Crown Court

Offence seriousness (culpability and harm)

B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

<p>Factors indicating higher culpability</p> <ol style="list-style-type: none"> Other offences committed at the same time, such as driving other than in accordance with the terms of a valid licence; driving while disqualified; driving without insurance; taking a vehicle without consent; driving a stolen vehicle Previous convictions for motoring offences, particularly offences that involve bad driving Irresponsible behaviour, such as failing to stop or falsely claiming that one of the victims was responsible for the collision <p>Factors indicating greater degree of harm</p> <ol style="list-style-type: none"> More than one person was killed as a result of the offence Serious injury to one or more persons in addition to the death(s) 	<p>Factors indicating lower culpability</p> <ol style="list-style-type: none"> Offender seriously injured in the collision The victim was a close friend or relative The actions of the victim or a third party contributed to the commission of the offence The offender's lack of driving experience contributed significantly to the likelihood of a collision occurring and/or death resulting The driving was in response to a proven and genuine emergency falling short of a defence
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Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

Consider a reduction for a guilty plea

Consider ancillary orders, including disqualification and deprivation of property

Refer to pages 168-174 for guidance on available ancillary orders

Decide sentence Give reasons

Causing death by driving: unlicensed, disqualified or uninsured drivers – factors to take into consideration

This guideline and accompanying notes are taken from the Sentencing Guidelines Council's definitive guideline *Causing Death by Driving*, published 15 July 2008

Key factors

- (a) Culpability arises from the offender driving a vehicle on a road or other public place when, by law, not allowed to do so; the offence does not involve any fault in the standard of driving.
- (b) Since driving whilst disqualified is more culpable than driving whilst unlicensed or uninsured, a higher starting point is proposed when the offender was disqualified from driving at the time of the offence.
- (c) Being uninsured, unlicensed or disqualified are the only determinants of seriousness for this offence, as there are no factors relating to the standard of driving. The list of aggravating factors identified is slightly different as the emphasis is on the decision to drive by an offender who is not permitted by law to do so.
- (d) A fine is unlikely to be an appropriate sentence for this offence; where a non-custodial sentence is considered appropriate, this should be a community order.
- (e) Where the *decision to drive was brought about by a genuine and proven emergency*, that may mitigate offence seriousness and so it is included as an additional mitigating factor.
- (f) An additional mitigating factor covers those situations where an offender genuinely believed that there was valid insurance or a valid licence.
- (g) Offender mitigation particularly relevant to this offence includes conduct after the offence such as where the offender gave direct, positive, assistance at the scene of a collision to victim(s). It may also include remorse – whilst it can be expected that anyone who has caused a death by driving would be remorseful, this cannot undermine its importance for sentencing purposes. It is for the court to determine whether an expression of remorse is genuine.
- (h) Where an offender has a good driving record, this is not a factor that automatically should be treated as mitigation, especially now that the presence of previous convictions is a statutory aggravating factor. However, any evidence to show that an offender has previously been an exemplary driver, for example having driven an ambulance, police vehicle, bus, taxi or similar vehicle conscientiously and without incident for many years, is a fact that the courts may well wish to take into account by way of offender mitigation. This is likely to have even greater effect where the driver is driving on public duty (for example, on ambulance, fire services or police duties) and was responding to an emergency.
- (i) Disqualification of the offender from driving and endorsement of the offender's driving licence are mandatory, and the offence carries between 3 and 11 penalty points when the court finds special reasons for not imposing disqualification. There is a discretionary power¹ to order an extended driving test/re-test where a person is convicted of this offence.

¹ Road Traffic Offenders Act 1988, s.36(4)

Causing death by driving: unlicensed, disqualified or uninsured drivers

Triable either way:

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: 2 years

Offence seriousness (culpability and harm)

A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
The offender was unlicensed or uninsured – no aggravating factors	Medium level community order	Low level community order to high level community order
The offender was unlicensed or uninsured plus at least 1 aggravating factor from the list below	26 weeks custody	High level community order to Crown Court
The offender was disqualified from driving OR The offender was unlicensed or uninsured plus 2 or more aggravating factors from the list below	Crown Court	Crown Court

Offence seriousness (culpability and harm)

B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

<p>Factors indicating higher culpability</p> <ol style="list-style-type: none"> 1. Previous convictions for motoring offences, whether involving bad driving or involving an offence of the same kind that forms part of the present conviction (i.e. unlicensed, disqualified or uninsured driving) 2. Irresponsible behaviour such as failing to stop or falsely claiming that someone else was driving <p>Factors indicating greater degree of harm</p> <ol style="list-style-type: none"> 1. More than one person was killed as a result of the offence 2. Serious injury to one or more persons in addition to the death(s) 	<p>Factors indicating lower culpability</p> <ol style="list-style-type: none"> 1. The decision to drive was brought about by a proven and genuine emergency falling short of a defence 2. The offender genuinely believed that he or she was insured or licensed to drive 3. The offender was seriously injured as a result of the collision 4. The victim was a close friend or relative
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Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

Consider a reduction for a guilty plea

Consider ancillary orders, including disqualification and deprivation of property

refer to pages 168-174 for guidance on available ancillary orders

Decide sentence Give reasons

Triable either way:

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: 2 years

- Must endorse and disqualify for at least 12 months. Must order extended re-test
- Must disqualify for **at least** 2 years if offender has had two or more disqualifications for periods of 56 days or more in preceding 3 years – **refer to page 184 and consult your legal adviser for further guidance**

If there is a delay in sentencing after conviction, consider interim disqualification

Offence seriousness (culpability and harm)

A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Single incident where little or no damage or risk of personal injury	Medium level community order	Low level community order to high level community order Disqualify 12 – 15 months
Incident(s) involving excessive speed or showing off, especially on busy roads or in built-up area; OR Single incident where little or no damage or risk of personal injury but offender was disqualified driver	12 weeks custody	High level community order to 26 weeks custody Disqualify 15 – 24 months
Prolonged bad driving involving deliberate disregard for safety of others; OR Incident(s) involving excessive speed or showing off, especially on busy roads or in built-up area, by disqualified driver; OR Driving as described in box above while being pursued by police	Crown Court	Crown Court

Offence seriousness (culpability and harm)

B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

<p>Factors indicating higher culpability</p> <ol style="list-style-type: none"> 1. Disregarding warnings of others 2. Evidence of alcohol or drugs 3. Carrying out other tasks while driving 4. Carrying passengers or heavy load 5. Tiredness 6. Aggressive driving, such as driving much too close to vehicle in front, racing, inappropriate attempts to overtake, or cutting in after overtaking 7. Driving when knowingly suffering from a medical condition which significantly impairs the offender's driving skills 8. Driving a poorly maintained or dangerously loaded vehicle, especially where motivated by commercial concerns <p>Factors indicating greater degree of harm</p> <ol style="list-style-type: none"> 1. Injury to others 2. Damage to other vehicles or property 	<p>Factors indicating lower culpability</p> <ol style="list-style-type: none"> 1. Genuine emergency 2. Speed not excessive 3. Offence due to inexperience rather than irresponsibility of driver
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**Form a preliminary view of the appropriate sentence,
then consider offender mitigation**

Common factors are identified in the pullout card

Consider a reduction for guilty plea

Consider ancillary orders, including compensation and deprivation of property

Refer to pages 168-174 for guidance on available ancillary orders

**Decide sentence
Give reasons**

Triable only summarily:

Maximum: Level 5 fine and/or 6 months

Must endorse and may disqualify. If no disqualification, impose 6 points

Offence seriousness (culpability and harm)

A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Full period expired but retest not taken	Low level community order	Band C fine to medium level community order 6 points or disqualify for 3 – 6 months
Lengthy period of ban already served	High level community order	Medium level community order to 12 weeks custody Lengthen disqualification for 6 – 12 months beyond expiry of current ban
Recently imposed ban	12 weeks custody	High level community order to 26 weeks custody Lengthen disqualification for 12 – 18 months beyond expiry of current ban

Offence seriousness (culpability and harm)

B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

<p>Factors indicating higher culpability</p> <ol style="list-style-type: none"> 1. Never passed test 2. Planned long-term evasion 3. Vehicle obtained during ban 4. Driving for remuneration <p>Factors indicating greater degree of harm</p> <ol style="list-style-type: none"> 1. Distance driven 2. Evidence of associated bad driving 3. Offender caused accident 	<p>Factors indicating lower culpability</p> <ol style="list-style-type: none"> 1. Defendant not present when disqualification imposed and genuine reason why unaware of ban 2. Genuine emergency established
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Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

Consider a reduction for guilty plea

Consider ancillary orders, including deprivation of property

Refer to pages 168-174 for guidance on available ancillary orders

Decide sentence Give reasons

Note

An offender convicted of this offence will always have at least one relevant previous conviction for the offence that resulted in disqualification. The starting points and ranges take this into account; any other previous convictions should be considered in the usual way – see pages 17 and 145.

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Excess alcohol (drive/attempt to drive)

Road Traffic Act 1988, s.5(1)(a)

Triable only summarily:

Maximum: Level 5 fine and/or 6 months

- Must endorse and disqualify for at least 12 months
- Must disqualify for **at least** 2 years if offender has had two or more disqualifications for periods of 56 days or more in preceding 3 years – **refer to page 184 and consult your legal adviser for further guidance**
- Must disqualify for **at least** 3 years if offender has been convicted of a relevant offence in preceding 10 years – **refer to page 184 and consult your legal adviser for further guidance**

If there is a delay in sentencing after conviction, consider interim disqualification

Note: the final column below provides guidance regarding the length of disqualification that may be appropriate in cases to which the 3 year minimum applies. The period to be imposed in any individual case will depend on an assessment of all the relevant circumstances, including the length of time since the earlier ban was imposed and the gravity of the current offence.

Offence seriousness (culpability and harm) A. Identify the appropriate starting point Starting points based on first time offender pleading not guilty						
Level of alcohol			Starting point	Range	Disqualification	Disqual. 2nd offence in 10 years – see note above
Breath (mg)	Blood (ml)	Urine (ml)				
36 – 59	81 – 137	108 – 183	Band C fine	Band C fine	12 – 16 months	36 – 40 months
60 – 89	138 – 206	184 – 274	Band C fine	Band C fine	17 – 22 months	36 – 46 months
90 – 119	207 – 275	275 – 366	Medium level community order	Low level community order to high level community order	23 – 28 months	36 – 52 months
120 – 150 and above	276 – 345 and above	367 – 459 and above	12 weeks custody	High level community order to 26 weeks custody	29 – 36 months	36 – 60 months

Offence seriousness (culpability and harm) B. Consider the effect of aggravating and mitigating factors (other than those within examples above) Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but these lists are not exhaustive	
Factors indicating higher culpability <ol style="list-style-type: none"> 1. LGV, HGV, PSV etc. 2. Poor road or weather conditions 3. Carrying passengers 4. Driving for hire or reward 5. Evidence of unacceptable standard of driving Factors indicating greater degree of harm <ol style="list-style-type: none"> 1. Involved in accident 2. Location e.g. near school 3. High level of traffic or pedestrians in the vicinity 	Factors indicating lower culpability <ol style="list-style-type: none"> 1. Genuine emergency established * 2. Spiked drinks * 3. Very short distance driven * * even where not amounting to special reasons

**Form a preliminary view of the appropriate sentence,
then consider offender mitigation**

Common factors are identified in the pullout card

Consider a reduction for guilty plea

**Consider offering drink/drive rehabilitation course
Consider ancillary orders, including forfeiture or
suspension of personal liquor licence**

Refer to pages 168-174 for guidance on available ancillary orders

**Decide sentence
Give reasons**

Excess alcohol (in charge)

Road Traffic Act 1988, s.5(1)(b)

Triable only summarily:

Maximum: Level 4 fine and/or 3 months

Must endorse and may disqualify. If no disqualification, impose 10 points

Offence seriousness (culpability and harm)

A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Level of alcohol			Starting point	Range
Breath (mg)	Blood (ml)	Urine (ml)		
36 – 59	81 – 137	108 – 183	Band B fine	Band B fine 10 points
60 – 89	138 – 206	184 – 274	Band B fine	Band B fine 10 points OR consider disqualification
90 – 119	207 – 275	275 – 366	Band C fine	Band C fine to medium level community order Consider disqualification up to 6 months OR 10 points
120 – 150 and above	276 – 345 and above	367 – 459 and above	Medium level community order	Low level community order to 6 weeks custody Disqualify 6-12 months

Offence seriousness (culpability and harm)

B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card –
the following may be particularly relevant but **these lists are not exhaustive**

Factors indicating higher culpability

1. LGV, HGV, PSV etc.
2. Ability to drive seriously impaired
3. High likelihood of driving
4. Driving for hire or reward

Factor indicating lower culpability

1. Low likelihood of driving

Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

Consider a reduction for guilty plea

Consider ancillary orders, including forfeiture or suspension of personal liquor licence

Refer to pages 168-174 for guidance on available ancillary orders

Decide sentence Give reasons

Fail to stop/report road accident

Triable only summarily:

Maximum: Level 5 fine and/or 6 months

Must endorse and may disqualify. If no disqualification, impose 5 – 10 points

Offence seriousness (culpability and harm) A. Identify the appropriate starting point Starting points based on first time offender pleading not guilty		
Examples of nature of activity	Starting point	Range
Minor damage/injury or stopped at scene but failed to exchange particulars or report	Band B fine	Band B fine 5 – 6 points
Moderate damage/injury or failed to stop and failed to report	Band C fine	Band C fine 7 – 8 points Consider disqualification
Serious damage/injury and/or evidence of bad driving	High level community order	Band C fine to 26 weeks custody Disqualify 6 – 12 months OR 9 – 10 points

Offence seriousness (culpability and harm) B. Consider the effect of aggravating and mitigating factors (other than those within examples above) Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but these lists are not exhaustive	
Factors indicating higher culpability 1. Evidence of drink or drugs/evasion of test 2. Knowledge/suspicion that personal injury caused (where not an element of the offence) 3. Leaving injured party at scene 4. Giving false details	Factors indicating lower culpability 1. Believed identity known 2. Genuine fear of retribution 3. Subsequently reported

Form a preliminary view of the appropriate sentence, then consider offender mitigation
 Common factors are identified in the pullout card

Consider a reduction for guilty plea

Consider ancillary orders, including compensation
 Refer to pages 168-174 for guidance on available ancillary orders

Decide sentence
Give reasons

Fail to provide specimen for analysis (drive/attempt to drive)

Road Traffic Act 1988, s.7(6)

Triable only summarily:

Maximum: Level 5 fine and/or 6 months

- Must endorse and disqualify for at least 12 months
- Must disqualify for **at least** 2 years if offender has had two or more disqualifications for periods of 56 days or more in preceding 3 years – **refer to page 184 and consult your legal adviser for further guidance**
- Must disqualify for **at least** 3 years if offender has been convicted of a relevant offence in preceding 10 years – **refer to page 184 and consult your legal adviser for further guidance**

If there is a delay in sentencing after conviction, consider interim disqualification

Note: the final column below provides guidance regarding the length of disqualification that may be appropriate in cases to which the 3 year minimum applies. The period to be imposed in any individual case will depend on an assessment of all the relevant circumstances, including the length of time since the earlier ban was imposed and the gravity of the current offence.

Offence seriousness (culpability and harm)

A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range	Disqualification	Disqual. 2nd offence in 10 years
Defendant refused test when had honestly held but unreasonable excuse	Band C fine	Band C fine	12 – 16 months	36 – 40 months
Deliberate refusal or deliberate failure	Low level community order	Band C fine to high level community order	17 – 28 months	36 – 52 months
Deliberate refusal or deliberate failure where evidence of serious impairment	12 weeks custody	High level community order to 26 weeks custody	29 – 36 months	36 – 60 months

Offence seriousness (culpability and harm)

B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

Factors indicating higher culpability <ol style="list-style-type: none"> 1. Evidence of unacceptable standard of driving 2. LGV, HGV, PSV etc. 3. Obvious state of intoxication 4. Driving for hire or reward Factor indicating greater degree of harm <ol style="list-style-type: none"> 1. Involved in accident 	Factor indicating lower culpability <ol style="list-style-type: none"> 1. Genuine but unsuccessful attempt to provide specimen
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Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

Consider a reduction for guilty plea

Consider offering drink/drive rehabilitation course; consider ancillary orders

Refer to pages 168-174 for guidance on available ancillary orders

Decide sentence Give reasons

Fail to provide specimen for analysis (in charge)

Triable only summarily:

Maximum: Level 4 fine and/or 3 months

Must endorse and may disqualify. If no disqualification, impose 10 points

Offence seriousness (culpability and harm) A. Identify the appropriate starting point Starting points based on first time offender pleading not guilty		
Examples of nature of activity	Starting point	Range
Defendant refused test when had honestly held but unreasonable excuse	Band B fine	Band B fine 10 points
Deliberate refusal or deliberate failure	Band C fine	Band C fine to medium level community order Consider disqualification OR 10 points
Deliberate refusal or deliberate failure where evidence of serious impairment	Medium level community order	Low level community order to 6 weeks custody Disqualify 6 -12 months

Offence seriousness (culpability and harm) B. Consider the effect of aggravating and mitigating factors (other than those within examples above) Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but these lists are not exhaustive	
Factors indicating higher culpability	Factors indicating lower culpability
1. Obvious state of intoxication 2. LGV, HGV, PSV etc. 3. High likelihood of driving 4. Driving for hire or reward	1. Genuine but unsuccessful attempt to provide specimen 2. Low likelihood of driving

Form a preliminary view of the appropriate sentence, then consider offender mitigation
 Common factors are identified in the pullout card

Consider a reduction for guilty plea

Consider ancillary orders
 Refer to pages 168-174 for guidance on available ancillary orders

Decide sentence
Give reasons

Triable only summarily:
Maximum: Level 5 fine

Must endorse and may disqualify. If no disqualification, impose 6-8 points – see notes below.

Offence seriousness (culpability and harm)

A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Using a motor vehicle on a road or other public place without insurance	Band C fine	Band C fine 6 points – 12 months disqualification – see notes below

Offence seriousness (culpability and harm)

B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

<p>Factors indicating higher culpability</p> <ol style="list-style-type: none">1. Never passed test2. Gave false details3. Driving LGV, HGV, PSV etc.4. Driving for hire or reward5. Evidence of sustained uninsured use <p>Factor indicating greater degree of harm</p> <ol style="list-style-type: none">1. Involved in accident2. Accident resulting in injury	<p>Factors indicating lower culpability</p> <ol style="list-style-type: none">1. Responsibility for providing insurance rests with another2. Genuine misunderstanding3. Recent failure to renew or failure to transfer vehicle details where insurance was in existence4. Vehicle not being driven
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Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

Consider a reduction for guilty plea

Consider ancillary orders

Refer to pages 168-174 for guidance on available ancillary orders

Decide sentence

Give reasons

Notes

Consider range from 7 points – 2 months disqualification where vehicle was being driven and no evidence that the offender has held insurance.

Consider disqualification of 6 – 12 months if evidence of sustained uninsured use and/or involvement in accident.

Triable only summarily:

Maximum: Level 3 fine (level 4 if motorway)

Must endorse and may disqualify. If no disqualification, impose 3-6 points

Offence seriousness (culpability and harm)

A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Speed limit (mph)	Recorded speed (mph)		
20	21 – 30	31 – 40	41 – 50
30	31 – 40	41 – 50	51 – 60
40	41 – 55	56 – 65	66 – 75
50	51 – 65	66 – 75	76 – 85
60	61 – 80	81 – 90	91 – 100
70	71 – 90	91 – 100	101 – 110
Starting point	Band A fine	Band B fine	Band B fine
Range	Band A fine	Band B fine	Band B fine
Points/disqualification	3 points	4 – 6 points OR Disqualify 7 – 28 days	Disqualify 7 – 56 days OR 6 points

Offence seriousness (culpability and harm)

B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

<p>Factors indicating higher culpability</p> <ol style="list-style-type: none"> Poor road or weather conditions LGV, HGV, PSV etc. Towing caravan/trailer Carrying passengers or heavy load Driving for hire or reward Evidence of unacceptable standard of driving over and above speed <p>Factors indicating greater degree of harm</p> <ol style="list-style-type: none"> Location e.g. near school High level of traffic or pedestrians in the vicinity 	<p>Factor indicating lower culpability</p> <ol style="list-style-type: none"> Genuine emergency established
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Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

Consider a reduction for guilty plea

Consider ancillary orders

Refer to pages 168-174 for guidance on available ancillary orders

Decide sentence Give reasons

Unfit through drink or drugs (drive/attempt to drive)

Road Traffic Act 1988, s.4(1)

Triable only summarily:

Maximum: Level 5 fine and/or 6 months

- Must endorse and disqualify for at least 12 months
- Must disqualify for **at least 2 years** if offender has had two or more disqualifications for periods of 56 days or more in preceding 3 years – **refer to page 184 and consult your legal adviser for further guidance**
- Must disqualify for **at least 3 years** if offender has been convicted of a relevant offence in preceding 10 years – **refer to page 184 and consult your legal adviser for further guidance**

If there is a delay in sentencing after conviction, consider interim disqualification

Note: the final column below provides guidance regarding the length of disqualification that may be appropriate in cases to which the 3 year minimum applies. The period to be imposed in any individual case will depend on an assessment of all the relevant circumstances, including the length of time since the earlier ban was imposed and the gravity of the current offence.

Offence seriousness (culpability and harm) A. Identify the appropriate starting point Starting points based on first time offender pleading not guilty				
Examples of nature of activity	Starting point	Range	Disqualification	Disqual. 2nd offence in 10 years
Evidence of moderate level of impairment and no aggravating factors	Band C fine	Band C fine	12 – 16 months	36 – 40 months
Evidence of moderate level of impairment and presence of one or more aggravating factors listed below	Band C fine	Band C fine	17 – 22 months	36 – 46 months
Evidence of high level of impairment and no aggravating factors	Medium level community order	Low level community order to high level community order	23 – 28 months	36 – 52 months
Evidence of high level of impairment and presence of one or more aggravating factors listed below	12 weeks custody	High level community order to 26 weeks custody	29 – 36 months	36 – 60 months

Offence seriousness (culpability and harm) B. Consider the effect of aggravating and mitigating factors (other than those within examples above) Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but these lists are not exhaustive	
Factors indicating higher culpability <ol style="list-style-type: none"> 1. LGV, HGV, PSV etc. 2. Poor road or weather conditions 3. Carrying passengers 4. Driving for hire or reward 5. Evidence of unacceptable standard of driving Factors indicating greater degree of harm <ol style="list-style-type: none"> 1. Involved in accident 2. Location e.g. near school 3. High level of traffic or pedestrians in the vicinity 	Factors indicating lower culpability <ol style="list-style-type: none"> 1. Genuine emergency established * 2. Spiked drinks * 3. Very short distance driven * * even where not amounting to special reasons

**Form a preliminary view of the appropriate sentence,
then consider offender mitigation**

Common factors are identified in the pullout card

Consider a reduction for guilty plea

Consider offering drink/drive rehabilitation course

Consider ancillary orders

Refer to pages 168-174 for guidance on available ancillary orders

Decide sentence

Give reasons

Unfit through drink or drugs (in charge)

Road Traffic Act 1988, s.4(2)

Triable only summarily:

Maximum: Level 4 fine and/or 3 months

Must endorse and may disqualify. If no disqualification, impose 10 points

Offence seriousness (culpability and harm)

A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Evidence of moderate level of impairment and no aggravating factors	Band B fine	Band B fine 10 points
Evidence of moderate level of impairment and presence of one or more aggravating factors listed below	Band B fine	Band B fine 10 points or consider disqualification
Evidence of high level of impairment and no aggravating factors	Band C fine	Band C fine to medium level community order 10 points or consider disqualification
Evidence of high level of impairment and presence of one or more aggravating factors listed below	High level community order	Medium level community order to 12 weeks custody Consider disqualification OR 10 points

Offence seriousness (culpability and harm)

B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

Factors indicating higher culpability	Factor indicating lower culpability
<ol style="list-style-type: none"> 1. LGV, HGV, PSV etc. 2. High likelihood of driving 3. Driving for hire or reward 	<ol style="list-style-type: none"> 1. Low likelihood of driving

Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card

Consider a reduction for guilty plea

Consider ancillary orders

Refer to pages 168-174 for guidance on available ancillary orders

Decide sentence Give reasons

OFFENCES APPROPRIATE FOR IMPOSITION OF FINE OR DISCHARGE

Part 1: Offences concerning the driver

Offence	Maximum	Points	Starting point	Special considerations
Fail to co-operate with preliminary (roadside) breath test	L3	4	B	
Fail to give information of driver's identity as required	L3	6	C	For limited companies, endorsement is not available; a fine is the only available penalty
Fail to produce insurance certificate	L4	–	A	Fine per offence, not per document
Fail to produce test certificate	L3	–	A	
Drive otherwise than in accordance with licence (where could be covered)	L3	–	A	
Drive otherwise than in accordance with licence	L3	3 – 6	A	Aggravating factor if no licence ever held

Part 2: Offences concerning the vehicle

* The guidelines for some of the offences below differentiate between three types of offender when the offence is committed in the course of business: driver, owner-driver and owner-company. **For owner-driver, the starting point is the same as for driver; however, the court should consider an uplift of at least 25%.**

Offence	Maximum	Points	Starting point	Special considerations
No excise licence	L3 or 5 times annual duty, whichever is greater	–	A (1-3 months unpaid) B (4-6 months unpaid) C (7-12 months unpaid)	Add duty lost
Fail to notify change of ownership to DVLA	L3	–	A	If offence committed in course of business: A (driver) A* (owner-driver) B (owner-company)
No test certificate	L3	–	A	If offence committed in course of business: A (driver) A* (owner-driver) B (owner-company)
Brakes defective	L4	3	B	If offence committed in course of business: B (driver) B* (owner-driver) C (owner-company) L5 if goods vehicle – see Part 5 below
Steering defective	L4	3	B	If offence committed in course of business: B (driver) B* (owner-driver) C (owner-company) L5 if goods vehicle – see Part 5 below

Offence	Maximum	Points	Starting point	Special considerations
Tyres defective	L4	3	B	If offence committed in course of business: B (driver) B* (owner-driver) C (owner-company) L5 if goods vehicle – see Part 5 below Penalty per tyre
Condition of vehicle/accessories/equipment involving danger of injury (Road Traffic Act 1988, s.40A)	L4	3	B	Must disqualify for at least 6 months if offender has one or more previous convictions for same offence within three years If offence committed in course of business: B (driver) B* (owner-driver) C (owner-company) L5 if goods vehicle – see Part 5 below
Exhaust defective	L3	–	A	If offence committed in course of business: A (driver) A* (owner-driver) B (owner-company)
Lights defective	L3	–	A	If offence committed in course of business: A (driver) A* (owner-driver) B (owner-company)

Part 3: Offences concerning use of vehicle

* The guidelines for some of the offences below differentiate between three types of offender when the offence is committed in the course of business: driver, owner-driver and owner-company. **For owner-driver, the starting point is the same as for driver; however, the court should consider an uplift of at least 25%.**

Offence	Maximum	Points	Starting point	Special considerations
Weight, position or distribution of load or manner in which load secured involving danger of injury (Road Traffic Act 1988, s.40A)	L4	3	B	Must disqualify for at least 6 months if offender has one or more previous convictions for same offence within three years If offence committed in course of business: A (driver) A* (owner-driver) B (owner-company) L5 if goods vehicle – see Part 5 below
Number of passengers or way carried involving danger of injury (Road Traffic Act 1988, s.40A)	L4	3	B	If offence committed in course of business: A (driver) A* (owner-driver) B (owner-company) L5 if goods vehicle – see Part 5 below
Position or manner in which load secured (not involving danger) (Road Traffic Act 1988, s.42)	L3	–	A	L4 if goods vehicle – see Part 5 below

Offence	Maximum	Points	Starting point	Special considerations
Overloading/exceeding axle weight	L5	–	A	Starting point caters for cases where the overload is up to and including 10%. Thereafter, 10% should be added to the penalty for each additional 1% of overload Penalty per axle If offence committed in course of business: A (driver) A* (owner-driver) B (owner-company) If goods vehicle – see Part 5 below
Dangerous parking	L3	3	A	
Pelican/zebra crossing contravention	L3	3	A	
Fail to comply with traffic sign (e.g. red traffic light, stop sign, double white lines, no entry sign)	L3	3	A	
Fail to comply with traffic sign (e.g. give way sign, keep left sign, temporary signs)	L3	–	A	
Fail to comply with police constable directing traffic	L3	3	A	
Fail to stop when required by police constable	L5 (mechanically propelled vehicle) L3 (cycle)	–	B	
Use of mobile telephone	L3	3	A	
Seat belt offences	L2 (adult or child in front) L2 (child in rear)	–	A	
Fail to use appropriate child car seat	L2	–	A	

Part 4: Motorway offences

Offence	Maximum	Points	Starting point	Special considerations
Drive in reverse or wrong way on slip road	L4	3	B	
Drive in reverse or wrong way on motorway	L4	3	C	
Drive off carriageway (central reservation or hard shoulder)	L4	3	B	
Make U turn	L4	3	C	
Learner driver or excluded vehicle	L4	3	B	
Stop on hard shoulder	L4	–	A	
Vehicle in prohibited lane	L4	3	A	
Walk on motorway, slip road or hard shoulder	L4	–	A	

Part 5: Offences re buses/goods vehicles over 3.5 tonnes (GVW)

* The guidelines for these offences differentiate between three types of offender: driver; owner-driver; and owner-company. **For owner-driver, the starting point is the same as for driver; however, the court should consider an uplift of at least 25%.**

** In all cases, take safety, damage to roads and commercial gain into account. Refer to page 150 for approach to fines for 'commercially motivated' offences.

Offence	Maximum	Points	Starting point	Special considerations
No goods vehicle plating certificate	L3	–	A (driver) A* (owner-driver) B (owner-company)	
No goods vehicle test certificate	L4	–	B (driver) B* (owner-driver) C (owner-company)	
Brakes defective	L5	3	B (driver) B* (owner-driver) C (owner-company)	
Steering defective	L5	3	B (driver) B* (owner-driver) C (owner-company)	
Tyres defective	L5	3	B (driver) B* (owner-driver) C (owner-company)	Penalty per tyre
Exhaust emission	L4	–	B (driver) B* (owner-driver) C (owner-company)	
Condition of vehicle/accessories/equipment involving danger of injury (Road Traffic Act 1988, s.40A)	L5	3	B (driver) B* (owner-driver) C (owner-company)	Must disqualify for at least 6 months if offender has one or more previous convictions for same offence within three years
Number of passengers or way carried involving danger of injury (Road Traffic Act 1988, s.40A)	L5	3	B (driver) B* (owner-driver) C (owner-company)	Must disqualify for at least 6 months if offender has one or more previous convictions for same offence within three years
Weight, position or distribution of load or manner in which load secured involving danger of injury (Road Traffic Act 1988, s.40A)	L5	3	B (driver) B* (owner-driver) C (owner-company)	Must disqualify for at least 6 months if offender has one or more previous convictions for same offence within three years
Position or manner in which load secured (not involving danger) (Road Traffic Act 1988, s.42)	L4	–	B (driver) B* (owner-driver) C (owner-company)	
Overloading/exceeding axle weight	L5	–	B (driver) B* (owner-driver) C (owner-company)	Starting points cater for cases where the overload is up to and including 10%. Thereafter, 10% should be added to the penalty for each additional 1% of overload Penalty per axle

Offence	Maximum	Points	Starting point	Special considerations
No operators licence	L4 (PSV) L5 (Goods)	–	B (driver) B* (owner-driver) C (owner-company)	
Speed limiter not used or incorrectly calibrated	L4	–	B (driver) B* (owner-driver) C (owner-company)	
Tachograph not used/not working	L5	–	B (driver) B* (owner-driver) C (owner-company)	
Exceed permitted driving time/periods of duty	L4	–	B (driver) B* (owner-driver) C (owner-company)	
Fail to keep/return written record sheets	L4	–	B (driver) B* (owner-driver) C (owner-company)	
Falsify or alter records with intent to deceive	L5/2 years	–	B (driver) B* (owner-driver) C (owner-company)	Either way offence

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Explanatory Material

Meaning of ‘range’, ‘starting point’ and ‘first time offender’

As in previous editions, and consistent with other Sentencing Guidelines Council guidelines, these guidelines are for a **first time offender** convicted after a trial. They provide a **starting point** based on an assessment of the seriousness of the offence and a **range** within which the sentence will normally fall in most cases.

A clear, consistent understanding of each of these terms is essential and the Council and the Sentencing Advisory Panel have agreed the meanings set out in paragraphs 1(a)-(d) below.

They are explained in a format that follows the structured approach to the sentencing decision which identifies first those aspects that affect the assessment of the seriousness of the offence, then those aspects that form part of personal mitigation and, finally, any reduction for a guilty plea.

In practice, the boundaries between these stages will not always be as clear cut but the underlying principles will remain the same.

In accordance with section 174 of the Criminal Justice Act 2003, a court is obliged to ‘*state in open court, in ordinary language and in general terms, its reasons for deciding on the sentence passed*’.

In particular, ‘*where guidelines indicate that a sentence of a particular kind, or within a particular range, would normally be appropriate and the sentence is of a different kind, or is outside that range*’ the court must give its reasons for imposing a sentence of a different kind or outside the range.

Assessing the seriousness of the offence

1. a) These guidelines apply to an offence that can be committed in a variety of circumstances with different levels of seriousness. They apply to a **first time offender** who has been convicted after a trial.¹ Within the guidelines, a **first time offender** is a person who does not have a conviction which, by virtue of section 143(2) of the Criminal Justice Act 2003, must be treated as an aggravating factor.
 - b) As an aid to consistency of approach, a guideline will describe a number of types of activity falling within the broad definition of the offence. These are set out in a column headed ‘examples of nature of activity’.
 - c) The expected approach is for a court to identify the description that most nearly matches the particular facts of the offence for which sentence is being imposed. This will identify a **starting point** from which the sentencer can depart to reflect aggravating or mitigating factors affecting the seriousness of the *offence* (beyond those contained in the description itself) to reach a **provisional sentence**.
 - d) The range is the bracket into which the **provisional sentence** will normally fall after having regard to factors which aggravate or mitigate the seriousness of the offence. The particular circumstances may, however, make it appropriate that the **provisional sentence** falls outside the **range**.
2. Where the offender has previous convictions which aggravate the seriousness of the current offence, that may take the **provisional sentence** beyond the **range** given particularly where there are significant other aggravating factors present.

¹ This means any case in which there is no guilty plea including, e.g., where an offender is convicted in absence after evidence has been heard

Offender Mitigation

3. Once the **provisional sentence** has been identified (by reference to the factors affecting the seriousness of the **offence**), the court will take into account any relevant factors of **offender** mitigation. Again, this may take the provisional sentence outside the range.

Reduction for guilty plea

4. Where there has been a guilty plea, any reduction attributable to that plea will be applied to the sentence at this stage. This reduction may take the sentence below the **range** provided.

Fine band starting points and ranges

In these guidelines, where the starting point or range for an offence is or includes a fine, it is expressed as one of three fine bands (A, B or C). As detailed on page 148 below, each fine band has both a starting point and a range.

On some offence guidelines, both the starting point and the range are expressed as a single fine band; see for example careless driving on page 117 where the starting point and range for the first level of offence activity are 'band A fine'. This means that the starting point will be the starting point for fine band A (50% of the offender's relevant weekly income) and the range will be the range for fine band A (25-75% of relevant weekly income). On other guidelines, the range encompasses more than one fine band; see for example drunk and disorderly in a public place on page 55 where the starting point for the second level of offence activity is 'band B fine' and the range is 'band A fine to band C fine'. This means that the starting point will be the starting point for fine band B (100% of relevant weekly income) and the range will be the lowest point of the range for fine band A to the highest point of the range for fine band C (25%-175% of relevant weekly income).

Sentencing for multiple offences

The starting points and ranges indicated in the individual offence guidelines assume that the offender is being sentenced for a single offence. Where an offender is being sentenced for multiple offences, the overall sentence must be just and appropriate having regard to the totality of the offending; the court should not simply aggregate the sentences considered suitable for the individual offences. The court's assessment of the totality of the offending may result in an overall sentence above the range indicated for the individual offences, including a sentence of a different type.¹

While concurrent sentences are generally to be preferred where the offences arose out of a single incident, consecutive sentences may be desirable in some circumstances. **Consult your legal adviser for further guidance.**

Offences not included in the guidelines

A number of offences are currently under consideration by the Council and will be included in the MCSG by way of an update when agreed. In the interim, the relevant guideline from the previous version of the MCSG has been included for ease of reference – **these do not constitute formal guidelines issued by the Council.**

Where there is no guideline for an offence, it may assist in determining sentence to consider the starting points and ranges indicated for offences that are of a similar level of seriousness.

When sentencing for the breach of any order for which there is not a specific guideline, the primary objective will be to ensure compliance. Reference to existing guidelines in respect of breaches of orders may provide a helpful point of comparison (see in particular page 43 (breach of community order) and page 83 (breach of protective order)).

Consult your legal adviser for further guidance.

¹ When considering whether the threshold for a community or custodial sentence is passed, ss.148(1) and 152(2) of the Criminal Justice Act 2003 confirm that the court may have regard to the combination of the offence and one or more offences associated with it

Approach to the assessment of fines

Introduction

1. The amount of a fine must reflect the **seriousness** of the offence.¹
2. The court must also take into account the **financial circumstances** of the offender; this applies whether it has the effect of increasing or reducing the fine.² Normally a fine should be of an amount that is capable of being paid within 12 months.
3. The aim is for the fine to have an equal impact on offenders with different financial circumstances; it should be a hardship but should not force the offender below a reasonable 'subsistence' level.
4. The guidance below aims to establish a clear, consistent and principled approach to the assessment of fines that will apply fairly in the majority of cases. However, it is impossible to anticipate every situation that may be encountered and in each case the court will need to exercise its judgement to ensure that the fine properly reflects the **seriousness of the offence** and takes into account the **financial circumstances** of the offender.

Fine bands

5. For the purpose of the offence guidelines, a fine is based on one of three bands (A, B or C).³ The selection of the relevant fine band, and the position of the individual offence within that band, is determined by the **seriousness** of the offence.

	Starting point	Range
Fine Band A	50% of relevant weekly income	25 – 75% of relevant weekly income
Fine Band B	100% of relevant weekly income	75 – 125% of relevant weekly income
Fine Band C	150% of relevant weekly income	125 – 175% of relevant weekly income

6. For an explanation of the meaning of starting point and range, both generally and in relation to fines, see pages 145-146.

Definition of relevant weekly income

7. The **seriousness** of an offence determines the choice of fine band and the position of the offence within the range for that band. The offender's **financial circumstances** are taken into account by expressing that position as a proportion of the offender's **relevant weekly income**.
8. Where an offender is in receipt of income from employment or is self-employed **and** that income is more than £100 per week after deduction of tax and national insurance (or equivalent where the offender is self-employed), the actual income is the **relevant weekly income**.
9. Where an offender's only source of income is state benefit (including where there is relatively low additional income as permitted by the benefit regulations) or the offender is in receipt of income from employment or is self-employed but the amount of income after deduction of tax and national insurance is £100 or less, the **relevant weekly income is deemed to be £100**. Additional information about the basis for this approach is set out on page 155.
10. In calculating relevant weekly income, no account should be taken of tax credits, housing benefit, child benefit or similar.

¹ Criminal Justice Act 2003, s.164(2)

² *ibid.*, ss.164(1) and 164(4)

³ As detailed in paras.36-38 below, two further bands are provided which apply where the offence has passed the threshold for a community order (Band D) or a custodial sentence (Band E) but the court decides that it need not impose such a sentence and that a financial penalty is appropriate

No reliable information

11. Where an offender has failed to provide information, or the court is not satisfied that it has been given sufficient reliable information, it is entitled to make such determination as it thinks fit regarding the financial circumstances of the offender.⁴ Any determination should be clearly stated on the court records for use in any subsequent variation or enforcement proceedings. In such cases, a record should also be made of the applicable fine band and the court's assessment of the position of the offence within that band based on the seriousness of the offence.

12. Where there is no information on which a determination can be made, the court should proceed on the basis of an **assumed relevant weekly income of £350**. This is derived from national median pre-tax earnings; a gross figure is used as, in the absence of financial information from the offender, it is not possible to calculate appropriate deductions.⁵

13. Where there is some information that tends to suggest a significantly lower or higher income than the recommended £350 default sum, the court should make a determination based on that information.

14. A court is empowered to remit a fine in whole or part if the offender subsequently provides information as to means.⁶ The assessment of offence seriousness and, therefore, the appropriate fine band and the position of the offence within that band is **not** affected by the provision of this information.

Assessment of financial circumstances

15. While the initial consideration for the assessment of a fine is the offender's relevant weekly income, the court is required to take account of the offender's **financial circumstances** more broadly. Guidance on important parts of this assessment is set out below.

16. An offender's financial circumstances may have the effect of increasing or reducing the amount of the fine; however, they are **not** relevant to the assessment of offence seriousness. They should be considered separately from the selection of the appropriate fine band and the court's assessment of the position of the offence within the range for that band.

Out of the ordinary expenses

17. In deciding the proportions of relevant weekly income that are the starting points and ranges for each fine band, account has been taken of reasonable living expenses. Accordingly, no further allowance should normally be made for these. In addition, no allowance should normally be made where the offender has dependants.

18. Outgoings will be relevant to the amount of the fine only where the expenditure is **out of the ordinary** and **substantially** reduces the ability to pay a financial penalty so that the requirement to pay a fine based on the standard approach would lead to **undue** hardship.

Unusually low outgoings

19. Where the offender's living expenses are substantially **lower** than would normally be expected, it may be appropriate to adjust the amount of the fine to reflect this. This may apply, for example, where an offender does not make any financial contribution towards his or her living costs.

⁴ Criminal Justice Act 2003, s.164(5)

⁵ For 2004-05, the median pre-tax income of all tax payers was £315 per week: HMRC Survey of Personal Incomes. This figure has been increased to take account of inflation

⁶ Criminal Justice Act 2003, s.165(2)

Savings

20. Where an offender has savings these will not normally be relevant to the assessment of the amount of a fine although they may influence the decision on time to pay.

21. However, where an offender has little or no income but has substantial savings, the court may consider it appropriate to adjust the amount of the fine to reflect this.

Household has more than one source of income

22. Where the household of which the offender is a part has more than one source of income, the fine should normally be based on the income of the offender alone.

23. However, where the offender's part of the income is very small (or the offender is wholly dependent on the income of another), the court may have regard to the extent of the household's income and assets which will be available to meet any fine imposed on the offender.⁷

Potential earning capacity

24. Where there is reason to believe that an offender's potential earning capacity is greater than his or her current income, the court may wish to adjust the amount of the fine to reflect this.⁸ This may apply, for example, where an unemployed offender states an expectation to gain paid employment within a short time. The basis for the calculation of fine should be recorded in order to ensure that there is a clear record for use in variation or enforcement proceedings.

High income offenders

25. Where the offender is in receipt of very high income, a fine based on a proportion of relevant weekly income may be disproportionately high when compared with the seriousness of the offence. In such cases, the court should adjust the fine to an appropriate level; as a general indication, in most cases the fine for a first time offender pleading not guilty should not exceed 75% of the maximum fine.

Offence committed for 'commercial' purposes

26. Some offences are committed with the intention of gaining a significant commercial benefit. These often occur where, in order to carry out an activity lawfully, a person has to comply with certain processes which may be expensive. They include, for example, 'taxi-touting' (where unauthorised persons seek to operate as taxi drivers) and 'fly-tipping' (where the cost of lawful disposal is considerable).

27. In some of these cases, a fine based on the standard approach set out above may not reflect the level of financial gain achieved or sought through the offending. Accordingly:

a. where the offender has generated income or avoided expenditure to a level that can be calculated or estimated, the court may wish to consider that amount when determining the financial penalty;

b. where it is not possible to calculate or estimate that amount, the court may wish to draw on information from the enforcing authorities about the general costs of operating within the law.

Reduction for a guilty plea

28. Where a guilty plea has been entered, the amount of the fine should be reduced by the appropriate proportion. See page 17 of the user guide for guidance.

⁷ *R v Engen* [2004] EWCA Crim 1536 (CA)

⁸ *R v Little* (unreported) 14 April 1976 (CA)

Other considerations

Maximum fines

29. A fine must not exceed the statutory limit. Where this is expressed in terms of a 'level', the maxima are:

Level 1	£200
Level 2	£500
Level 3	£1,000
Level 4	£2,500
Level 5	£5,000

Victims surcharge

30. Whenever a court imposes a fine in respect of an offence committed after 1 April 2007, it must order the offender to pay a surcharge of £15.⁹

31. Where the offender is of adequate means, the court must not reduce the fine to allow for imposition of the surcharge. Where the offender does not have sufficient means to pay the total financial penalty considered appropriate by the court, the order of priority is compensation, surcharge, fine, costs.

32. Further guidance is set out in *Guidance on Victims Surcharge* issued by the Justices' Clerks' Society and Magistrates' Association (30 March 2007).

Costs

33. See page 175 for guidance on the approach to costs. Where the offender does not have sufficient means to pay the total financial penalty considered appropriate by the court, the order of priority is compensation, surcharge, fine, costs.

Multiple offences

34. Where an offender is to be fined for two or more offences that arose out of the same incident, it will often be appropriate to impose on the most serious offence a fine which reflects the totality of the offending where this can be achieved within the maximum penalty for that offence. 'No separate penalty' should be imposed for the other offences.

35. Where compensation is being ordered, that will need to be attributed to the relevant offence as will any necessary ancillary orders.

Fine Bands D and E

36. Two further fine bands are provided to assist a court in calculating a fine where the offence and general circumstances would otherwise warrant a community order (band D) or a custodial sentence (band E) but the court has decided that it need not impose such a sentence and that a financial penalty is appropriate. See pages 160 and 163 for further guidance.

37. The following starting points and ranges apply:

	Starting point	Range
Fine Band D	250% of relevant weekly income	200 – 300% of relevant weekly income
Fine Band E	400% of relevant weekly income	300 – 500% of relevant weekly income

38. In cases where these fine bands apply, it may be appropriate for the fine to be of an amount that is larger than can be repaid within 12 months. See paragraph 43 below.

⁹ Criminal Justice Act 2003, ss.161A and 161B

Imposition of fines with custodial sentences

39. A fine and a custodial sentence may be imposed for the same offence although there will be few circumstances in which this is appropriate, particularly where the custodial sentence is to be served immediately. One example might be where an offender has profited financially from an offence but there is no obvious victim to whom compensation can be awarded. Combining these sentences is most likely to be appropriate only where the custodial sentence is short and/or the offender clearly has, or will have, the means to pay.

40. Care must be taken to ensure that the overall sentence is proportionate to the seriousness of the offence and that better off offenders are not able to 'buy themselves out of custody'.

Consult your legal adviser in any case in which you are considering combining a fine with a custodial sentence.

Payment

41. A fine is payable in full on the day on which it is imposed. The offender should always be asked for immediate payment when present in court and some payment on the day should be required wherever possible.

42. Where that is not possible, the court may, in certain circumstances, require the offender to be detained. More commonly, a court will allow payments to be made over a period set by the court:

- a. if periodic payments are allowed, the fine should normally be payable within a maximum of 12 months. However, it may be unrealistic to expect those on very low incomes to maintain payments for as long as a year;
- b. compensation should normally be payable within 12 months. However, in exceptional circumstances it may be appropriate to allow it to be paid over a period of up to 3 years.

43. Where fine bands D and E apply (see paragraphs 36-38 above), it may be appropriate for the fine to be of an amount that is larger than can be repaid within 12 months. In such cases, the fine should normally be payable within a maximum of 18 months (band D) or 2 years (band E).

44. It is generally recognised that the maximum weekly payment by a person in receipt of state benefit should rarely exceed £5.

45. When allowing payment by instalments by an offender in receipt of earned income, the following approach may be useful. If the offender has dependants or larger than usual commitments, the weekly payment is likely to be decreased.

Net weekly income	Starting point for weekly payment
£60	£5
£120	£10
£200	£25
£250	£30
£300	£50
£400	£80

46. The payment terms must be included in any collection order made in respect of the amount imposed; see pages 156-157.
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Assessment of fines: sentencing structure

1. Decide that a fine is appropriate

2. Offence seriousness

A. Identify the appropriate fine band

- In the offence guidelines, the starting point for a fine is identified as fine band A, B or C
- Each fine band provides a **starting point** and a **range** related to the **seriousness** of the offence expressed as a proportion of the offender's **relevant weekly income** – see paragraph 5 on page 148

2. Offence seriousness

B. Consider the effect of aggravating and mitigating factors

- **Move up or down from the starting point** to reflect aggravating or mitigating factors that affect the **seriousness** of the offence – this will usually be within the indicated **range** for the fine band but the court is not precluded from going outside the range where the facts justify it – see pages 145-146

3. Consider offender mitigation

- The court may consider it appropriate to make a further adjustment to the starting point in light of any matters of offender mitigation – see page 17 of the user guide

4. Form a view of the position of the offence within the range for the fine band then take into account the offender's financial circumstances

- Require the offender to provide a statement of **financial circumstances**. Obtain further information through questioning if necessary. Failure to provide the information when required is an offence
- The provision of financial information does not affect the seriousness of the offence or, therefore, the position of the offence within the range for the applicable fine band
- The initial consideration for the assessment of the fine is the offender's **relevant weekly income** – see paragraphs 7-10 on page 148
- However, the court must take account of the offender's financial circumstances more broadly. These may have the effect of **increasing or reducing** the amount of the fine – see paragraphs 15-25 on pages 149-150
- Where the court has **insufficient information** to make a proper determination of the offender's financial circumstances, it may make such determination as it thinks fit – see paragraphs 11-14 on page 149

5. Consider a reduction for a guilty plea

- Reduce the fine by the appropriate proportion – see page 17 of the user guide

6. Consider ancillary orders, including compensation

- Consider compensation in every case where the offending has resulted in personal injury, loss or damage – give reasons if order not made – see pages 165-167. Compensation takes priority over a fine where there are insufficient resources to pay both
- See pages 168-174 for guidance on available ancillary orders

7. Decide sentence

Give reasons

- **The resulting fine must reflect the seriousness of the offence and must take into account the offender's financial circumstances**
- Consider the proposed total financial penalty, including compensation, victims surcharge and costs. Where there are insufficient resources to pay the total amount, the order of priority is compensation, surcharge, fine, costs
- Give reasons for the sentence passed, including any ancillary orders
- State if the sentence has been reduced to reflect a guilty plea; indicate what the sentence would otherwise have been
- Explain if the sentence is of a different kind or outside the range indicated in the guidelines
- Expect immediate payment. If payment by instalments allowed, the court must make a collection order unless this would be impracticable or inappropriate – see pages 156-157



Additional information: approach to offenders on low income

1. An offender whose primary source of income is state benefit will generally receive a base level of benefit (e.g. job seekers' allowance, a relevant disability benefit or income support) and may also be eligible for supplementary benefits depending on his or her individual circumstances (such as child tax credits, housing benefit, council tax benefit and similar).
2. If relevant weekly income were defined as the amount of benefit received, this would usually result in higher fines being imposed on offenders with a higher level of need; in most circumstances that would not properly balance the seriousness of the offence with the financial circumstances of the offender. While it might be possible to exclude from the calculation any allowance above the basic entitlement of a single person, that could be complicated and time consuming.
3. Similar issues can arise where an offender is in receipt of a low earned income since this may trigger eligibility for means related benefits such as working tax credits and housing benefit depending on the particular circumstances. It will not always be possible to determine with any confidence whether such a person's financial circumstances are significantly different from those of a person whose primary source of income is state benefit.
4. For these reasons, a simpler and fairer approach to cases involving offenders in receipt of low income (whether primarily earned or as a result of benefit) is to identify an amount that is deemed to represent the offender's relevant weekly income.
5. While a precise calculation is neither possible nor desirable, it is considered that an amount that is approximately half-way between the base rate for job seekers' allowance and the net weekly income of an adult earning the minimum wage for 30 hours per week represents a starting point that is both realistic and appropriate; **this is currently £100**.¹ The calculation is based on a 30 hour working week in recognition of the fact that many of those on minimum wage do not work a full 37 hour week and that lower minimum wage rates apply to younger people.
6. It is expected that this figure will remain in use until 31 March 2011. Future revisions of the guideline will update the amount in accordance with current benefit and minimum wage levels.

¹ With effect from 1 October 2007, the minimum wage is £5.52 per hour for an adult aged 22 or over. Based on a 30 hour week, this equates to approximately £149.14 after deductions for tax and national insurance. To ensure equivalence of approach, the level of job seekers' allowance for a single person aged 22 has been used for the purpose of calculating the mid point; this is currently £46.85

Enforcement of fines

1. The Courts Act 2003 created a new fines collection scheme which provides for greater administrative enforcement of fines. The main features are set out below. **Consult your legal adviser for further guidance.**

Attachment of earnings orders/applications for benefit deductions

2. Unless it would be impracticable or inappropriate to do so, the court must make an attachment of earnings order (AEO) or application for benefit deductions (ABD) whenever:

- compensation is imposed;¹ or
- the court concludes that the offender is an existing defaulter and that the existing default cannot be disregarded.²

3. In other cases, the court may make an AEO or ABD with the offender's consent.³

Collection orders

4. The court must make a collection order in every case in which a fine or compensation order is imposed unless this would be impracticable or inappropriate.⁴ The collection order must state:

- the amount of the sum due, including the amount of any fine, compensation order or other sum;
- whether the court considers the offender to be an existing defaulter;
- whether an AEO or ABD has been made and information about the effect of the order;
- if the court has not made an AEO or ABD, the payment terms;
- if an AEO or ABD has been made, the reserve terms (i.e. the payment terms that will apply if the AEO or ABD fails). It will often be appropriate to set a reserve term of payment in full within 14 days.

5. If an offender defaults on a collection order and is not already subject to an AEO or ABD, a fines officer must make an AEO or ABD.⁵ Where this would be impracticable or inappropriate, or where the offender is already subject to an AEO or ABD, a fines officer must either:⁶

- issue a 'further steps' notice advising that the officer intends to take any of the enforcement action listed below; or
- refer the case to a magistrates' court.

6. The following enforcement action is available to a fines officer:⁷

- making an AEO or ABD;
- issuing a distress warrant;
- registering the sum in the register of judgments and orders;

¹ Courts Act 2003, sch.5, para.7A

² *ibid.*, para.8

³ *ibid.*, para.9

⁴ *ibid.*, para.12

⁵ *ibid.*, para.26

⁶ *ibid.*, para.37

⁷ *ibid.*, para.38

- making a clamping order. A magistrates' court may order the sale of the vehicle if the sum remains unpaid one month after the vehicle was clamped;⁸
- taking enforcement proceedings in the High Court or county court.

7. Where a fines officer refers the case to a magistrates' court, the court may:⁹

- vary the payment terms or reserve terms;
- take any of the enforcement steps available to fines officers listed above;
- where the court is satisfied that the default is due to wilful refusal or culpable neglect, increase the fine by up to 50 per cent;¹⁰
- discharge the collection order and exercise any of the court's standard fine enforcement powers.

8. The case may also be referred to a magistrates' court if an offender appeals against a 'further steps' notice issued by a fines officer.¹¹

Standard fine enforcement powers

9. These powers are normally available if:

- a collection order is not made; or
- a case is referred to a magistrates' court by a fines officer; or
- an offender appeals against a 'further steps' notice issued by a fines officer.

Remission of fine

10. The court can remit a fine 'if it thinks it just to do so having regard to a change of circumstances since the date of conviction'.¹² This requirement may be satisfied where:

- the defaulter's means have changed since the fine was imposed;
- arrears have accumulated by the imposition of additional fines to a level which makes repayment of the total amount within a reasonable time unlikely;
- the defaulter is serving a term of imprisonment; remission may be more practical than lodging concurrent warrants of imprisonment.

11. There is no power to remit excise penalties (which include fines and back duty for using an untaxed vehicle).

12. Compensation and costs cannot be remitted but, where payment is unlikely or impractical due to the defaulter's means or circumstances, the sum may be discharged or reduced. Victims and claimants should be consulted and given an opportunity to attend the hearing.

13. The court is also empowered to remit a fine that was imposed in the absence of information about the offender's means.¹³

⁸ Courts Act 2003, sch.5, para.41

⁹ *ibid.*, para.39

¹⁰ *ibid.*, para.42A

¹¹ *ibid.*, para.37

¹² Magistrates' Courts Act 1980, s.85

¹³ Criminal Justice Act 2003, s.165

Imprisonment in default of payment

14. A court may issue a warrant of commitment if the defaulter is already serving a custodial sentence.¹⁴

15. If a means inquiry establishes that the defaulter has the ability to pay immediately, and the offence was punishable by imprisonment, the court can commit him or her to prison.¹⁵

16. Otherwise, the court may issue a warrant of commitment only if there has been a means inquiry and the court:¹⁶

- is satisfied that the default is due to wilful refusal or culpable neglect; and
- has considered or tried all other methods of enforcing payment and concluded that they are inappropriate or unsuccessful.

17. The other methods that the court is required to have considered or tried are:

- money payment supervision order;¹⁷
- application for deductions from benefit;
- attachment of earnings order;
- distress warrant;
- taking enforcement proceedings in the High Court or county court
- if the offender is aged under 25, an attendance centre order (where available).¹⁸

18. The period of commitment should be the shortest which is likely to succeed in obtaining payment; the periods prescribed in schedule 4 of the Magistrates' Courts Act 1980 (set out below) should be regarded as maxima rather than the norm. The period of imprisonment may be suspended on condition that regular payments are made. Where such payments are not made, the defaulter should be brought back before the court for consideration of whether the period of imprisonment should be implemented.

Maximum periods of imprisonment in default of payment	
Amount not exceeding £200	7 days
Amount exceeding £200 but not exceeding £500	14 days
Amount exceeding £500 but not exceeding £1,000	28 days
Amount exceeding £1,000 but not exceeding £2,500	45 days
Amount exceeding £2,500 but not exceeding £5,000	3 months
Amount exceeding £5,000 but not exceeding £10,000	6 months
Amount exceeding £10,000	12 months

¹⁴ Magistrates' Courts Act 1980, s.82(3)

¹⁵ Magistrates' Courts Act 1980, s.82(4)(a)

¹⁶ *ibid.*, s.82(4)(b)

¹⁷ *ibid.*, s.88

¹⁸ Powers of Criminal Courts (Sentencing) Act 2000, s.60

Detention in the precincts of the court or at a police station

19. The court may order that an offender be detained for a specified period ending no later than 8pm on the day on which the order is made:¹⁹ this is available both as a sentence in its own right and as an order in respect of unpaid fines where it can be used as an alternative to remission. No means inquiry is required.

Warrant for detention in police station overnight

20. The court may issue a warrant for the overnight detention of a defaulter in a police station.²⁰ The defaulter must be released at 8am the following day, or the same day if arrested after midnight.

Discharge of fines by unpaid work (being piloted in specified areas until 31 March 2009)

21. Schedule 6 of the Courts Act 2003 empowers the court to order that an offender discharge a fine by performing work for a specified number of hours. This is not a community order; it is an enforcement provision that may be invoked following a court's decision on the information before it that a fine was an appropriate sentence for the offence.

22. The order can be made only where other means of enforcing the sum are likely to be impracticable or inappropriate. The offender must be suitable for unpaid work and consent to the order. The number of hours is determined by dividing the sum due by the 'prescribed hourly sum' (currently £6 per hour).

¹⁹ Magistrates' Courts Act 1980, s.135

²⁰ *ibid.*, s.136

Community orders

1. Community orders have the effect of restricting the offender's liberty while providing punishment in the community, rehabilitation for the offender, and/or ensuring that the offender engages in reparative activities. They are available in respect of all offences, including those for which the maximum penalty is a fine.

2. A community order must not be imposed unless the offence is 'serious enough to warrant such a sentence'.¹ For detailed guidance regarding this threshold and the approach to community orders, sentencers should refer to the Sentencing Guidelines Council's definitive guideline *New Sentences: Criminal Justice Act 2003*, published 16 December 2004, and the National Standards for the Probation Service. The Council guideline emphasises that:

- sentencers must consider all available disposals at the time of sentence; even where the threshold for a community sentence has been passed, a fine or discharge may be an appropriate penalty;
- where an offender is being sentenced for a non-imprisonable offence, great care is needed in assessing whether a community sentence is appropriate since failure to comply could result in a custodial sentence (see page 43).²

3. Community orders consist of one or more of the following requirements:

- unpaid work requirement;
- activity requirement;
- programme requirement;
- prohibited activity requirement;
- curfew requirement;
- exclusion requirement;
- residence requirement;
- mental health treatment requirement;
- drug rehabilitation requirement;
- alcohol treatment requirement;
- supervision requirement;
- in a case where the offender is aged under 25, attendance centre requirement (where available).

4. The court must ensure that the restriction on the offender's liberty is commensurate with the seriousness of the offence and that the requirements are the most suitable for the offender.³ Where two or more requirements are included, they must be compatible with each other.⁴

¹ Criminal Justice Act 2003, s.148

² The power to make a community order for a non-imprisonable offence will be removed by provisions in the Criminal Justice and Immigration Act 2008 when in force

³ Criminal Justice Act 2003, ss.148(2)(a) and 148(2)(b)

⁴ *ibid.*, s.177(6)

5. The Council guideline provides that the seriousness of the offence should be the initial factor in determining which requirements to include in a community order. It establishes three sentencing ranges within the community order band based on offence seriousness (low, medium and high), and identifies non-exhaustive examples of requirements that might be appropriate in each. These are set out below. The examples focus on punishment in the community; other requirements of a rehabilitative nature may be more appropriate in some cases.

Low	Medium	High
Offences only just cross community order threshold, where the seriousness of the offence or the nature of the offender's record means that a discharge or fine is inappropriate	Offences that obviously fall within the community order band	Offences only just fall below the custody threshold or the custody threshold is crossed but a community order is more appropriate in the circumstances
In general, only one requirement will be appropriate and the length may be curtailed if additional requirements are necessary		More intensive sentences which combine two or more requirements may be appropriate
Suitable requirements might include: <ul style="list-style-type: none"> • 40 – 80 hours unpaid work • Curfew requirement within the lowest range (e.g. up to 12 hours per day for a few weeks) • Exclusion requirement, without electronic monitoring, for a few months • Prohibited activity requirement • Attendance centre requirement (where available) 	Suitable requirements might include: <ul style="list-style-type: none"> • Greater number of hours of unpaid work (e.g. 80 – 150 hours) • Curfew requirement within the middle range (e.g. up to 12 hours for 2 – 3 months) • Exclusion requirement lasting in the region of 6 months • Prohibited activity requirement 	Suitable requirements might include: <ul style="list-style-type: none"> • 150 – 300 hours unpaid work • Activity requirement up to the maximum of 60 days • Curfew requirement up to 12 hours per day for 4 – 6 months • Exclusion order lasting in the region of 12 months

6. The particular requirements imposed within the range must be suitable for the individual offender and will be influenced by a wide range of factors including the stated purpose(s) of the sentence, the risk of re-offending, the ability of the offender to comply, and the availability of the requirements in the local area. Sentencers must ensure that the sentence strikes the right balance between proportionality and suitability. The resulting restriction on liberty must be a proportionate response to the offence that was committed.

7. In many cases, a pre-sentence report will be pivotal in helping the court decide whether to impose a community order and, if so, whether particular requirements or combinations of requirements are suitable for an individual offender. Whenever the court reaches the provisional view that a community order may be appropriate, it should usually request a pre-sentence report. It will be helpful to indicate the court's preliminary opinion as to which of the three sentencing ranges is relevant and the purpose(s) of sentencing that the package of requirements is expected to fulfil. Ideally this should be provided to the Probation Service in written form, with a copy retained on the court file for the benefit of the sentencing bench.

Electronic monitoring

8. Subject to limited exceptions, the court must impose an electronic monitoring requirement where it makes a community order with a curfew or exclusion requirement, and may do so in all other cases.⁵ Electronic monitoring should be used with the primary purpose of promoting and monitoring compliance with other requirements, in circumstances where the punishment of the offender and/or the need to safeguard the public and prevent re-offending are the most important concerns.

Breach of Community Order

9. **Refer to page 43 above for guidance on the approach to sentencing for breaches of community orders.**

⁵ Criminal Justice Act 2003, ss.177(3) and 177(4)

Custodial sentences

1. A custodial sentence must not be imposed unless the offence 'was so serious that neither a fine alone nor a community sentence can be justified for the offence'.¹ Guidance regarding this threshold and the approach to the imposition of custodial sentences is set out in the Sentencing Guidelines Council's definitive guideline *Overarching Principles: Seriousness*, published 16 December 2004.

2. The guideline emphasises that:

- the clear intention of the threshold test is to reserve prison as a punishment for the most serious offences;
- passing the custody threshold does *not* mean that a custodial sentence should be deemed inevitable; custody can still be avoided in light of offender mitigation or where there is a suitable intervention in the community which provides sufficient restriction (by way of punishment) while addressing the rehabilitation of the offender to prevent future crime. However, where the offence would otherwise appear to warrant a term of imprisonment within the Crown Court's jurisdiction, it is for the Crown Court to make that judgement;
- the approach to the imposition of a custodial sentence should be as follows:
 - (a) Has the custody threshold been passed?
 - (b) If so, is it unavoidable that a custodial sentence be imposed?
 - (c) If so, can that sentence be suspended? (Sentencers should be clear that they would have imposed a custodial sentence if the power to suspend had not been available.)
 - (d) If not, impose a sentence which takes immediate effect for the shortest term commensurate with the seriousness of the offence.²

Suspended sentences

3. If the court imposes a term of imprisonment between 14 days and six months,³ it may suspend the sentence for between 6 months and 2 years (the 'operational period').⁴ Where the court imposes two or more sentences to be served consecutively, the power to suspend the sentence is not available in relation to any of them unless the aggregate of the terms does not exceed six months.⁵

4. When the court suspends a sentence, it must impose one or more requirements for the offender to undertake in the community. The requirements are identical to those available for community orders.

5. If the offender fails to comply with a community requirement or commits a further offence, the court must either activate the suspended sentence in full or in part or amend the order so as to:⁶

- a) extend the period during which the offender is subject to community requirements;
- b) make the community requirements more onerous; or
- c) extend the operational period.

¹ Criminal Justice Act 2003, s.152(2)

² *ibid.*, s.153(2)

³ When implemented, provisions in the Criminal Justice and Immigration Act 2008 will restrict the use of this power in magistrates' courts

⁴ Criminal Justice Act 2003, s.189(1)

⁵ *ibid.*, s.189(2) as amended by art.2(2)(b) of the Criminal Justice Act 2003 (Sentencing) (Transitory Provisions) Order 2005

⁶ *ibid.*, sch.12, para.8

6. There are many similarities between suspended sentences and community orders: requirements can be imposed on the offender and the court can respond to breach by sending him or her to custody. The crucial difference is that a suspended sentence is a prison sentence; **it may be imposed only where the court is satisfied both that the custodial threshold has been passed and that it is not appropriate to impose a community order, fine or other non-custodial sentence.**

7. A further difference is the approach to any breach; when sentencing for breach of a community order, the primary objective is to ensure that the requirements of the order are complied with. When responding to breach of a suspended sentence, the statutory presumption is that the custodial sentence will be activated.⁷

8. Detailed guidance regarding suspended sentences and the appropriate response to breaches is set out in the Sentencing Guidelines Council's definitive guideline *New Sentences: Criminal Justice Act 2003*, published 16 December 2004. The guideline emphasises that:

- **a custodial sentence that is suspended should be for the same term that would have applied if the sentence was to be served immediately;**
- the time for which a sentence is suspended should reflect the length of the sentence; up to 12 months might normally be appropriate for a suspended sentence of up to 6 months;
- the imposition of a custodial sentence is both punishment and a deterrent; to ensure that the overall terms of the sentence are commensurate with offence seriousness, requirements imposed as part of the sentence should generally be less onerous than if a community order had been imposed;
- a court wishing to impose onerous or intensive requirements should reconsider whether a community sentence might be more appropriate (refer to pages 160-162);
- where an offender has breached a suspended sentence, there is a presumption that the suspended prison term will be activated in full or in part. Relevant considerations will include the extent to which (if any) the offender complied with the requirements, and the circumstances of the breach.

9. When the court imposes a suspended sentence, it may also order that the sentence be reviewed periodically at a review hearing.⁸

⁷ Criminal Justice Act 2003, sch.12, para.8(3)

⁸ *ibid.*, s.191

Compensation

1. The court must consider making a compensation order in any case where personal injury, loss or damage has resulted from the offence.¹ It can either be a sentence in its own right or an ancillary order. The court must give reasons if it decides not to order compensation.

2. Up to £5,000 compensation may be imposed in respect of each offence of which the offender has been convicted.² Compensation may also be ordered in respect of offences taken into consideration. The total amount of compensation must not exceed the maximum available for the offence(s) of which the offender has been convicted so that, e.g., where an offender has been convicted of two offences, the maximum amount of compensation able to be awarded is £10,000 regardless of the number of offences taken into consideration.

3. Where the personal injury, loss or damage arises from a road accident, a compensation order may be made only if there is a conviction for an offence under the Theft Act 1968, or the offender is uninsured and the Motor Insurers' Bureau will not cover the loss.³ Compensation paid by the Motor Insurers' Bureau is subject to an excess of £300.

4. Subject to consideration of the victim's views (see paragraph 6 below), the court must order compensation wherever possible and should not have regard to the availability of other sources such as civil litigation or the Criminal Injuries Compensation Scheme. Any amount paid by an offender under a compensation order will generally be deducted from a subsequent civil award or payment under the Scheme to avoid double compensation.⁴

5. Compensation may be ordered for such amount as the court considers appropriate having regard to any evidence and any representations made by the offender or prosecutor.⁵ The court must also take into account the offender's means (see also paragraphs 11-13 below).⁶

6. Compensation should benefit, not inflict further harm on, the victim. Any financial recompense from the offender may cause distress. A victim may or may not want compensation from the offender and assumptions should not be made either way. The victim's views are properly obtained through sensitive discussion by the police or witness care unit, when it can be explained that the offender's ability to pay will ultimately determine whether, and how much, compensation is ordered and whether the compensation will be paid in one lump sum or by instalments. If the victim does not want compensation, this should be made known to the court and respected.

7. In cases where it is difficult to ascertain the full amount of the loss suffered by the victim, consideration should be given to making a compensation order for an amount representing the agreed or likely loss. Where relevant information is not immediately available, it may be appropriate to grant an adjournment for it to be obtained.

8. The court should consider two types of loss:

- financial loss sustained as a result of the offence such as the cost of repairing damage or, in case of injury, any loss of earnings or medical expenses;
- pain and suffering caused by the injury (including terror, shock or distress) and any loss of facility. This should be assessed in light of all factors that appear to the court to be relevant, including any medical evidence, the victim's age and personal circumstances.

¹ Powers of Criminal Courts (Sentencing) Act 2000, s.130

² *ibid.*, s.131(1)

³ *ibid.*, s.130(6)

⁴ The minimum amount payable under the Criminal Injuries Compensation Scheme is £1,000

⁵ Powers of Criminal Courts (Sentencing) Act 2000, s.130(4)

⁶ *ibid.*, s.130(11)

9. The tables below suggest starting points for compensating physical and mental injuries commonly encountered in a magistrates' court. They have been developed to be consistent with the approach in the Criminal Injuries Compensation Authority tariff (revised 2001), available at: www.cica.gov.uk

Physical injury

Type of injury	Description	Starting point
Graze	Depending on size	Up to £75
Bruise	Depending on size	Up to £100
Cut: no permanent scar	Depending on size and whether stitched	£100 – 500
Black eye		£125
Eye	Blurred or double vision lasting up to 6 weeks	Up to £1,000
	Blurred or double vision lasting for 6 to 13 weeks	£1,000
	Blurred or double vision lasting for more than 13 weeks (recovery expected)	£1,750
Brain	Concussion lasting one week	£1,500
Nose	Undisplaced fracture of nasal bone	£1,000
	Displaced fracture requiring manipulation	£2,000
	Deviated nasal septum requiring septoplasty	£2,000
Loss of non-front tooth	Depending on cosmetic effect	£1,250
Loss of front tooth		£1,750
Facial scar	Minor disfigurement (permanent)	£1,500
Arm	Fractured humerus, radius, ulna (substantial recovery)	£3,300
Shoulder	Dislocated (substantial recovery)	£1,750
Wrist	Dislocated/fractured – including scaphoid fracture (substantial recovery)	£3,300
	Fractured – colles type (substantial recovery)	£4,400
Sprained wrist, ankle	Disabling for up to 6 weeks	Up to £1,000
	Disabling for 6 to 13 weeks	£1,000
	Disabling for more than 13 weeks	£2,500
Finger	Fractured finger other than index finger (substantial recovery)	£1,000
	Fractured index finger (substantial recovery)	£1,750
	Fractured thumb (substantial recovery)	£2,000
Leg	Fractured fibula (substantial recovery)	£2,500
	Fractured femur, tibia (substantial recovery)	£3,800
Abdomen	Injury requiring laparotomy	£3,800

Mental injury

Description	Starting point
Temporary mental anxiety (including terror, shock, distress), not medically verified	Up to £1,000
Disabling mental anxiety, lasting more than 6 weeks, medically verified*	£1,000
Disability mental illness, lasting up to 28 weeks, confirmed by psychiatric diagnosis*	£2,500

* In this context, 'disabling' means a person's functioning is significantly impaired in some important aspect of his or her life, such as impaired work or school performance or significant adverse effects on social relationships.

10. The following table, which is also based on the Criminal Injuries Compensation Authority tariff, sets out suggested starting points for compensating physical and sexual abuse. It will be rare for cases involving this type of harm to be dealt with in a magistrates' court and it will be important to **consult your legal adviser for guidance in these situations**.

Physical and sexual abuse

Type of abuse	Description	Starting point
Physical abuse of adult	Intermittent physical assaults resulting in accumulation of healed wounds, burns or scalds, but with no appreciable disfigurement	£2,000
Physical abuse of child	Isolated or intermittent assault(s) resulting in weals, hair pulled from scalp etc.	£1,000
	Intermittent physical assaults resulting in accumulation of healed wounds, burns or scalds, but with no appreciable disfigurement	£2,000
Sexual abuse of adult	Non-penetrative indecent physical acts over clothing	£1,000
	Non-penetrative indecent act(s) under clothing	£2,000
Sexual abuse of child (under 18)	Non-penetrative indecent physical act(s) over clothing	£1,000
	Non-penetrative frequent assaults over clothing or non-penetrative indecent act under clothing	£2,000
	Repetitive indecent acts under clothing	£3,300

11. Once the court has formed a preliminary view of the appropriate level of compensation, it must have regard to the means of the offender so far as they are known. Where the offender has little money, the order may have to be scaled down or additional time allowed to pay; the court may allow compensation to be paid over a period of up to three years in appropriate cases.

12. The fact that a custodial sentence is imposed does not, in itself, make it inappropriate to order compensation; however, it may be relevant to whether the offender has the means to satisfy the order.

13. Where the court considers that it would be appropriate to impose a fine and a compensation order but the offender has insufficient means to pay both, priority should be given to compensation. Compensation also takes priority over the victim surcharge where the offender's means are an issue.

Ancillary orders

1. There are several ancillary orders available in a magistrates' court which should be considered in appropriate cases. Annex A lists the offences in respect of which certain orders are available. The individual offence guidelines above also identify ancillary orders particularly likely to be relevant to the offence. **In all cases, consult your legal adviser regarding available orders and their specific requirements and effects.**

2. Ancillary orders should be taken into account when assessing whether the overall penalty is commensurate with offence seriousness.

Anti-social behaviour orders

- The court may make an anti-social behaviour order (ASBO) in respect of any person convicted of an offence.¹
- Before making an order, the court must find that the offender acted in an anti-social manner, i.e. in a manner likely to cause harassment, alarm or distress.
- The court must also consider that the order is necessary to protect the public from further anti-social acts by the offender.
- The order must have effect for at least two years. If the offender is sentenced to custody, the provisions of the order may be suspended until release.
- An ASBO may include only prohibitions; there is no power to impose positive obligations.
- **The following is a summary of principles and other considerations relevant to the making of an ASBO in relation to adults and youths taken from the Sentencing Guidelines Council's definitive guideline *Breach of an Anti-Social Behaviour Order*:**

- (1) Proceedings for the imposition of an ASBO are civil in nature, so that hearsay evidence is admissible, but a court must be satisfied to a criminal standard that the individual has acted in the anti-social manner alleged.
- (2) The test of 'necessity' requires the exercise of judgement or evaluation; it does not require proof beyond reasonable doubt that the order is "necessary".
- (3) It is particularly important that the findings of fact giving rise to the making of the order are recorded by the court.
- (4) As the ASBO is a preventative order it is unlawful to use it as a punishment; so, when sentencing an offender, a court must not allow itself to be diverted into making an ASBO as an alternative or additional sanction.
- (5) The police have powers to arrest an individual for any criminal offence, and the court should not impose an order which prohibits the subject from committing an offence if it will not add significantly to the existing powers of the police to protect others from anti-social behaviour by the subject. An order must not prohibit a criminal offence merely to increase the sentence range available for that offence.
- (6) The terms of the order made must be precise and capable of being understood by the subject. Where the subject is aged under 18, it is important for both the subject and the parent or guardian to confirm their understanding of the order and its terms. The prohibitions must be enforceable in the sense that they should allow a breach to be readily identified and capable of being proved.
- (7) An order should not impose a 'standard list' of prohibitions, but should identify and prohibit the particular type of anti-social behaviour that gives rise to the necessity of an ASBO. Each separate prohibition must be necessary to protect persons from anti-social behaviour by the subject, and each order must be specifically fashioned to deal with the individual concerned.

¹ Crime and Disorder Act 1998, s.1C

- (8) The order must be proportionate to the legitimate aim pursued and commensurate with the risk guarded against. The court should avoid making compliance very difficult through the imposition of numerous prohibitions, and those that will cause great disruption to the subject should be considered with particular care. It is advisable to make an order for a specific period; when considering the duration of an order imposed on a youth, the potential for the subject to mature may be a relevant factor.
- (9) Not all prohibitions set out in an ASBO have to run for the full term of the ASBO itself. The test must always be what is necessary to deal with the particular anti-social behaviour of the offender and what is proportionate in the circumstances. At least one of the prohibitions must last for the duration of the order but not all are required to last for the 2 years that is the minimum length of an order. The court can vary the terms of an order at any time upon application by the subject (or the applicant in the case of an order made upon application).
- (10) When making an order upon conviction, the court has the power to suspend its terms until the offender has been released from a custodial sentence. However, where a custodial sentence of 12 months or more is imposed and the offender is liable to be released on licence and thus subject to recall, an order will not generally be necessary. There might be cases where geographical restraints could supplement licence conditions.
- (11) Other considerations:
- (i) Where an ASBO is imposed on a subject aged 10-17, the court must consider whether a **Parenting order** would be desirable in the interests of preventing repetition of the anti-social behaviour.² Such an order must be made where the offender is aged under 16 and the condition is met, but is discretionary where the offender is aged 16 or 17.
 - (ii) Where a magistrates' court imposes a stand-alone ASBO, it must also consider whether an **Individual support order** (ISO) would be desirable to tackle the underlying causes of the behaviour.³
 - (iii) In the case of an adult, the court may make an **Intervention order** if the underlying causes of the anti-social behaviour are drug-related and appropriate treatment is available.⁴

(12) Interim orders:

Where a decision to impose an order (either upon application or conviction) is pending, the court may make an interim order if it considers it just to do so.⁵ The court must balance the seriousness of the behaviour and the urgency with which it is necessary to take steps to control it, with the likely impact of an interim order upon the potential subject.⁶

- Further guidance is set out in *A Guide for the Judiciary (third edition)* January 2007 (supplement January 2008) published by the Judicial Studies Board.⁷ Refer also to *Anti-Social Behaviour Orders – A Guide to Law and Procedure in the Magistrates' Court* published by the Justices' Clerks' Society.⁸

² Crime and Disorder Act 1998, s.8. The Anti-social Behaviour Act 2003 now provides for a court to impose stand-alone Parenting Orders, if it is satisfied that the child has engaged in criminal or anti-social behaviour. The ASBA also provides for certain agencies to enter into Parenting Contracts which, as an alternative to legal action, have much in common with the non-statutory Acceptable Behaviour Contracts

³ *ibid.*, s.1AA

⁴ *ibid.*, s.1G

⁵ *ibid.*, s.1D

⁶ *Leeds Magistrates' Court, ex parte Kenny; Secretary of State for Constitutional Affairs and another, ex parte M* [2004] EWCA Civ 312

⁷ www.jsboard.co.uk

⁸ www.jc-society.com/File/ASBO_updated_GPG_May_2006.pdf

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Binding over orders

- The court has the power to bind an individual over to keep the peace.⁵
- The order is designed to prevent future misconduct and requires the individual to promise to pay a specified sum if the terms of the order are breached. Exercise of the power does not depend upon conviction.
- Guidance on the making of binding over orders is set out in part III.31 of the Consolidated Criminal Practice Direction, as amended in March 2007. Key principles include:
 - (1) before imposing the order, the court must be satisfied beyond reasonable doubt that a breach of the peace involving violence or an imminent threat of violence has occurred, or that there is a real risk of violence in the future. The court should hear evidence and the parties before making any order;
 - (2) the court should state its reasons for making the order;
 - (3) the order should identify the specific conduct or activity from which the individual must refrain, the length of the order and the amount of the recognisance;
 - (4) the length of the order should be proportionate to the harm sought to be avoided and should not generally exceed 12 months;
 - (5) when fixing the amount of the recognisance, the court should have regard to the individual's financial resources.

Confiscation orders

- Confiscation orders under the Proceeds of Crime Act 2002 may only be made by the Crown Court.
- An offender convicted of an offence in a magistrates' court must be committed to the Crown Court where this is requested by the prosecution with a view to a confiscation order being considered.⁶
- If the committal is made in respect of an either way offence, the court must state whether it would have committed the offender to the Crown Court for sentencing had the issue of a confiscation order not arisen.

Deprivation orders

- The court has the power to deprive an offender of property used for the purpose of committing or facilitating the commission of an offence, whether or not it deals with the offender in any other way.⁷
- Before making the order, the court must have regard to the value of the property and the likely financial and other effects on the offender.
- Without limiting the circumstances in which the court may exercise the power, a vehicle is deemed to have been used for the purpose of committing the offence where the offence is punishable by imprisonment and consists of:
 - (1) driving, attempting to drive, or being in charge of a motor vehicle;
 - (2) failing to provide a specimen; or
 - (3) failing to stop and/or report an accident.⁸

⁵ Justices of the Peace Act 1361, Magistrates Court Act 1980, s.115

⁶ Proceeds of Crime Act 2002, s.70

⁷ Powers of Criminal Courts (Sentencing) Act 2000, s.143

⁸ *ibid.*, ss.143(6) and 143(7)

Deprivation of ownership of animal

- Where an offender is convicted of one of the following offences under the Animal Welfare Act 2006, the court may make an order depriving him or her of ownership of the animal and for its disposal:⁹
 - (1) causing unnecessary suffering (s.4);
 - (2) mutilation (s.5);
 - (3) docking of dogs' tails (ss.6(1) and 6(2));
 - (4) fighting etc. (s.8);
 - (5) breach of duty to ensure welfare (s.9);
 - (6) breach of disqualification order (s.36(9)).
- The court is required to give reasons if it decides not to make such an order.
- Deprivation of ownership may be ordered instead of or in addition to dealing with the offender in any other way.

Disqualification from ownership of animals

- Where an offender is convicted of one of the following offences under the Animal Welfare Act 2006, the court may disqualify him or her from owning or keeping animals, dealing in animals, and/or transporting animals:¹⁰
 - (1) causing unnecessary suffering (s.4);
 - (2) mutilation (s.5);
 - (3) docking of dogs' tails (ss.6(1) and 6(2));
 - (4) administration of poisons etc. (s.7);
 - (5) fighting etc. (s.8);
 - (6) breach of duty to ensure welfare (s.9);
 - (7) breach of licensing or registration requirements (s.13(6));
 - (8) breach of disqualification order (s.36(9)).
- The court is required to give reasons if it decides not to make such an order.
- The court may specify a period during which an offender may not apply for termination of the order under section 43 of the Animal Welfare Act 2006; if no period is specified, an offender may not apply for termination of the order until one year after the order was made.
- Disqualification may be imposed instead of or in addition to dealing with the offender in any other way.

⁹ Animal Welfare Act 2006, s.33

¹⁰ *ibid.*, s.34

Disqualification orders

- The court may disqualify any person convicted of an offence from driving for such period as it thinks fit.¹¹ This may be instead of or in addition to dealing with the offender in any other way.
- The section does not require the offence to be connected to the use of a vehicle. The Court of Appeal has held that the power is available as part of the overall punitive element of a sentence, and the only restrictions on the exercise of the power are those in the statutory provision.¹²

Disqualification of company directors

- The Company Directors Disqualification Act 1986 empowers the court to disqualify an offender from being a director or taking part in the promotion, formation or management of a company for up to five years.
- An order may be made in two situations:
 - (1) where an offender has been convicted of an indictable offence in connection with the promotion, formation, management, liquidation or striking off of a company;¹³ or
 - (2) where an offender has been convicted of an offence involving a failure to file documents with, or give notice to, the registrar of companies. If the offence is triable only summarily, disqualification can be ordered only where the offender has been the subject of three default orders or convictions in the preceding five years.¹⁴

Drinking banning orders (when in force)

- Where an offender is convicted of an offence which was committed while under the influence of alcohol, the court must consider whether a drinking banning order is necessary for the purpose of protecting others from further criminal or disorderly conduct by the offender while he or she is under the influence of alcohol.¹⁵ If the court decides not to make such an order, it must state its reasons.
- A drinking banning order may impose any prohibition on the offender which is necessary for the purpose identified above, and must include such prohibition as the court considers necessary on the offender's entering licensed premises.¹⁶
- The court must specify the duration of the order, which must be between two months and two years.¹⁷
- The court may direct that the order will cease to have effect before the end of the specified period if the offender completes an approved course;¹⁸ **consult your legal adviser for guidance on this provision.** The court is required to give reasons if it does not include such a direction in the order.

¹¹ Powers of Criminal Courts (Sentencing) Act 2000., s.146

¹² *R v Sofekun* [2008] EWCA Crim 2035

¹³ Company Directors Disqualification Act 1988, s.2

¹⁴ *ibid.*, s.5

¹⁵ Violent Crime Reduction Act 2006, s.6

¹⁶ *ibid.*, s.1

¹⁷ *ibid.*, s.2

¹⁸ *ibid.*, ss.2(3)-(8)

Exclusion orders

- The court may make an exclusion order where an offender has been convicted of an offence committed on licensed premises involving the use or threat of violence.
- The order prohibits the offender from entering **specified** licensed premises without the consent of the licensee.¹⁹
- The term of the order must be between three months and two years.
- Note that the provisions regarding exclusion orders will be repealed when the power to impose drinking banning orders is brought into force.

Football banning orders

- The court must make a football banning order where an offender has been convicted of a relevant offence and it is satisfied that there are reasonable grounds to believe that making a banning order would help to prevent violence or disorder.²⁰ If the court is not so satisfied, it must state that fact and give its reasons.
- Relevant offences are those set out in schedule 1 of the Football Spectators Act 1989; see Annex A.
- The order requires the offender to report to a police station within five days, may require the offender to surrender his or her passport, and may impose requirements on the offender in relation to any regulated football matches.
- Where the order is imposed in addition to a sentence of immediate imprisonment, the term of the order must be between six and ten years. In other cases, the term of the order must be between three and five years.

Forfeiture and destruction of drugs

- Where an offender is convicted of an offence under the Misuse of Drugs Act 1971, the court may order forfeiture and destruction of anything shown to the satisfaction of the court to relate to the offence.²¹

Forfeiture and destruction of goods bearing unauthorised trade mark

- Where the court is satisfied that an offence under section 92 of the Trade Marks Act 1994 has been committed, it must (on the application of a person who has come into possession of the goods in connection with the investigation or prosecution of the offence) order forfeiture of the goods.²²
- If it considers it appropriate, instead of ordering destruction of the goods, the court may direct that they be released to a specified person on condition that the offending sign is erased, removed or obliterated.

Forfeiture or suspension of liquor licence

- Where an offender who holds a personal licence to supply alcohol is charged with a 'relevant offence', he or she is required to produce the licence to the court, or inform the court of its existence, no later than his or her first appearance.
- 'Relevant offences' are listed in schedule 4 of the Licensing Act 2003; see Annex A

¹⁹ Licensed Premises (Exclusion of Certain Persons) Act 1980, s.1

²⁰ Football Spectators Act 1989, s.14A

²¹ Misuse of Drugs Act 1971, s.27(1)

²² Trade Marks Act 1994, s.97

- Where the offender is convicted, the court may order forfeiture of the licence or suspend it for up to six months.²³ When deciding whether to order forfeiture or suspension, the court may take account of the offender's previous convictions for 'relevant offences'.²⁴
- Whether or not forfeiture or suspension is ordered, the court is required to notify the licensing authority of the offender's conviction and the sentence imposed.

Parenting orders

- The court may make a parenting order where an offender has been convicted of an offence under section 444 of the Education Act 1996 (failing to secure regular attendance at school) and the court is satisfied that the order would be desirable in the interests of preventing the commission of any further offence under that section.²⁵
- The order may impose such requirements that the court considers desirable in the interests of preventing the commission of a further offence under section 444.
- A requirement to attend a counselling or guidance programme may be included only if the offender has been the subject of a parenting order on a previous occasion.
- The term of the order must not exceed 12 months.

Restitution orders

- Where goods have been stolen and an offender is convicted of any offence with reference to theft of those goods, the court may make a restitution order.²⁶
- The court may:
 - (1) order anyone in possession or control of the stolen goods to restore them to the victim;
 - (2) on the application of the victim, order that goods directly or indirectly representing the stolen goods (as being the proceeds of any disposal or realisation of the stolen goods) be transferred to the victim; or
 - (3) order that a sum not exceeding the value of the stolen goods be paid to the victim out of any money taken out of the offender's possession on his or her apprehension.

Restraining orders

- Where an offender is convicted of harassment or conduct causing fear of violence, the court may make a restraining order.²⁷
- The order may prohibit the offender from doing anything for the purpose of protecting the victim of the offence, or any other person mentioned in the order, from further conduct which amounts to harassment or will cause a fear of violence.²⁸
- The order may have effect for a specified period or until further order.²⁹
- When in force, section 5A of the Protection from Harassment Act 1997 will enable the court to make a restraining order in respect of an offender who has been acquitted of an offence if the court considers that it is necessary to protect a person from harassment. **Consult your legal adviser for guidance.**

²³ Licensing Act 2003, s.129(2)

²⁴ *ibid.*, s.129(3)

²⁵ Crime and Disorder Act 1998, s.8

²⁶ Powers of Criminal Courts (Sentencing) Act 2000, s.148

²⁷ Protection from Harassment Act 1997, s.5

²⁸ *ibid.*, s.5(2)

²⁹ *ibid.*, s.5(3)

Sexual offences prevention orders

- The court may make a sexual offences prevention order where it deals with an offender in respect of an offence listed in schedules 3 or 5 of the Sexual Offences Act 2003; see Annex A.³⁰
- The court must be satisfied that the order is necessary to protect others from 'serious sexual harm' from the offender; the prohibitions in the order must also be necessary for this purpose.
- 'Serious sexual harm' means serious physical or psychological harm caused by the offender committing an offence listed in schedule 3 of the Sexual Offences Act 2003.
- The order may include only negative prohibitions; there is no power to impose positive obligations.
- The order must have effect for at least five years.

³⁰ Sexual Offences Act 2003, s.104

Costs

1. Where an offender is convicted of an offence, the court has discretion to make such order as to costs as it considers just and reasonable.¹

2. The Court of Appeal has given the following guidance:²

- an order for costs should never exceed the sum which, having regard to the offender's means and any other financial order imposed, he or she is able to pay and which it is reasonable to order him or her to pay;
- an order for costs should never exceed the sum which the prosecutor actually and reasonably incurred;
- the purpose of the order is to compensate the prosecutor. Where the conduct of the defence has put the prosecutor to avoidable expense, the offender may be ordered to pay some or all of that sum to the prosecutor but the offender must not be punished for exercising the right to defend himself or herself;
- the costs ordered to be paid should not be grossly disproportionate to any fine imposed for the offence. This principle was affirmed in *BPS Advertising Limited v London Borough of Barnet*³ in which the Court held that, while there is no question of an arithmetical relationship, the question of costs should be viewed in the context of the maximum penalty considered by Parliament to be appropriate for the seriousness of the offence;
- if the combined total of the proposed fine and the costs sought by the prosecutor exceeds the sum which the offender could reasonably be ordered to pay, the costs order should be reduced rather than the fine;
- it is for the offender to provide details of his or her financial position so as to enable the court to assess what he or she can reasonably afford to pay. If the offender fails to do so, the court is entitled to draw reasonable inferences as to means from all the circumstances of the case;
- if the court proposes to make any financial order against the offender, it must give him or her fair opportunity to adduce any relevant financial information and to make appropriate submissions.

3. A costs award may cover the costs of investigation as well as prosecution. However, where the investigation was carried out as part of a council officer's routine duties, for which he or she would have been paid in the normal way, this is a relevant factor to be taken into account when deciding the appropriate amount of any costs order.⁴

4. Where the court wishes to impose costs in addition to a fine, compensation and/or the victim surcharge but the offender has insufficient resources to pay the total amount, the order of priority is:

- i) compensation;
- ii) victim surcharge;
- iii) fine;
- iv) costs.

¹ Prosecution of Offences Act 1985, s.18

² *R v Northallerton Magistrates' Court, ex parte Dove* [2000] 1 Cr App R (S) 136 (CA)

³ [2006] EWCA 3335 (Admin) QBD

⁴ *ibid.*

Deferred sentences

1. The court is empowered to defer passing sentence for up to six months.¹ The court may impose any conditions during the period of deferment that it considers appropriate. These could be specific requirements as set out in the provisions for community sentences, or requirements that are drawn more widely. The purpose of deferment is to enable the court to have regard to the offender's conduct after conviction or any change in his or her circumstances, including the extent to which the offender has complied with any requirements imposed by the court.

2. Three conditions must be satisfied before sentence can be deferred:

- the offender must consent;
- the offender must undertake to comply with requirements imposed by the court; and
- the court must be satisfied that deferment is in the interests of justice.

3. Guidance regarding deferred sentences is set out in the Sentencing Guidelines Council's definitive guideline *New Sentences: Criminal Justice Act 2003*, published 16 December 2004. The guideline emphasises that:

- deferred sentences will be appropriate in very limited circumstances;
- deferred sentences are likely to be relevant predominantly in a small group of cases close to either the community or custodial sentence threshold where, should the offender be prepared to adapt his behaviour in a way clearly specified by the sentencer, the court may be prepared to impose a lesser sentence;
- sentencers should impose specific and measurable conditions that do not involve a serious restriction on liberty;
- the court should give a clear indication of the type of sentence it would have imposed if it had decided not to defer;
- the court should also ensure that the offender understands the consequences of failure to comply with the court's wishes during the deferment period.

4. If the offender fails to comply with any requirement imposed in connection with the deferment, or commits another offence, he or she can be brought back to court before the end of the deferment period and the court can proceed to sentence.

¹ Powers of Criminal Courts (Sentencing) Act 2000, s.1 as amended by Criminal Justice Act 2003, s.278 and sch.23, para.1

Offences committed in a domestic context

1. When sentencing an offence committed in a domestic context, refer to the Sentencing Guidelines Council's definitive guideline *Overarching Principles: Domestic Violence*, published 7 December 2006. The guideline emphasises that:

- as a starting point for sentence, offences committed in a domestic context should be regarded as no less serious than offences committed in a non-domestic context;
- many offences of violence in a domestic context are dealt with in a magistrates' court as an offence of common assault or assault occasioning actual bodily harm because the injuries sustained are relatively minor. Offences involving serious violence will warrant a custodial sentence in the majority of cases;
- a number of aggravating factors may commonly arise by virtue of the offence being committed in a domestic context (see list below);
- since domestic violence takes place within the context of a current or past relationship, the history of the relationship will often be relevant in assessing the gravity of the offence. A court is entitled to take into account anything occurring within the relationship as a whole, which may reveal relevant aggravating or mitigating factors;
- in respect of an offence of violence in a domestic context, an offender's good character in relation to conduct outside the home should generally be of no relevance where there is a proven pattern of behaviour;
- assertions that the offence has been provoked by conduct of the victim need to be treated with great care, both in determining whether they have a factual basis and in considering whether the circumstances of the alleged conduct amounts to provocation sufficient to mitigate the seriousness of the offence;
- where the custody threshold is only just crossed, so that if a custodial sentence is imposed it will be a short sentence, the court will wish to consider whether the better option is a suspended sentence order or a community order, including in either case a requirement to attend an accredited domestic violence programme. Such an option will only be appropriate where the court is satisfied that the offender genuinely intends to reform his or her behaviour and that there is a real prospect of rehabilitation being successful. Such a situation is unlikely to arise where there has been a pattern of abuse.

Refer to paragraphs 4.1 to 4.4 of the Council guideline for guidance regarding the relevance of the victim's wishes to sentence.

Aggravating factors

2. The following aggravating factors may be of particular relevance to offences committed in a domestic context and should be read alongside the general factors set out on the pullout card:

Factors indicating higher culpability

1. Abuse of trust and abuse of power
2. Using contact arrangements with a child to instigate an offence
3. Proven history of violence or threats by the offender in a domestic setting
4. History of disobedience to court orders

Factors indicating a greater degree of harm

1. Victim is particularly vulnerable
2. Impact on children

Aggravation related to race, religion, disability or sexual orientation

Racial or religious aggravation – statutory provisions

1. Sections 29 to 32 of the Crime and Disorder Act 1998 create specific racially or religiously aggravated offences, which have higher maximum penalties than the non-aggravated versions of those offences. The individual offence guidelines indicate whether there is a specifically aggravated form of the offence.

2. An offence is racially or religiously aggravated for the purposes of sections 29-32 of the Act if the offender demonstrates hostility towards the victim based on his or her membership (or presumed membership) of a racial or religious group, or if the offence is racially or religiously motivated.¹

3. For all other offences, section 145 of the Criminal Justice Act 2003 provides that the court must regard racial or religious aggravation as an aggravating factor.

4. The court should not treat an offence as racially or religiously aggravated for the purposes of section 145 where a racially or religiously aggravated form of the offence was charged but resulted in an acquittal.² The court should not normally treat an offence as racially or religiously aggravated if a racially or religiously aggravated form of the offence was available but was not charged.³ **Consult your legal adviser for further guidance in these situations.**

Aggravation related to disability or sexual orientation – statutory provisions

5. Under section 146 of the Criminal Justice Act 2003, the court must treat as an aggravating factor the fact that:

- an offender demonstrated hostility towards the victim based on his or her sexual orientation or disability (or presumed sexual orientation or disability); or
- the offence was motivated by hostility towards persons who are of a particular sexual orientation or who have a particular disability.

Approach to sentencing

6. A court should not conclude that offending involved aggravation related to race, religion, disability or sexual orientation without first putting the offender on notice and allowing him or her to challenge the allegation.

7. When sentencing any offence where such aggravation is found to be present, the following approach should be followed. **This applies both to the specific racially or religiously aggravated offences under the Crime and Disorder Act 1998 and to offences which are regarded as aggravated under section 145 or 146 of the Criminal Justice Act 2003.**⁴

- sentencers should first determine the appropriate sentence, leaving aside the element of aggravation related to race, religion, disability or sexual orientation but taking into account all other aggravating or mitigating factors;
- the sentence should then be increased to take account of the aggravation related to race, religion, disability or sexual orientation;
- the increase may mean that a more onerous penalty of the same type is appropriate, or that the threshold for a more severe type of sentence is passed;

¹ Crime and Disorder Act 1998, s.28

² Refer to *R v McGillivray* [2005] EWCA Crim 604 (CA)

³ Refer to *R v O'Callaghan* [2005] EWCA Crim 317 (CA)

⁴ Refer to *R v Kelly and Donnelly* [2001] EWCA Crim 170 in which the Court considered the approach to sentencing in cases involving racial or religious aggravation

- the sentencer must state in open court that the offence was aggravated by reason of race, religion, disability or sexual orientation;
- the sentencer should state what the sentence would have been without that element of aggravation.

8. The extent to which the sentence is increased will depend on the seriousness of the aggravation. The following factors could be taken as indicating a high level of aggravation:

Offender's intention

- The element of aggravation based on race, religion, disability or sexual orientation was planned
- The offence was part of a pattern of offending by the offender
- The offender was a member of, or was associated with, a group promoting hostility based on race, religion, disability or sexual orientation
- The incident was deliberately set up to be offensive or humiliating to the victim or to the group of which the victim is a member

Impact on the victim or others

- The offence was committed in the victim's home
- The victim was providing a service to the public
- The timing or location of the offence was calculated to maximise the harm or distress it caused
- The expressions of hostility were repeated or prolonged
- The offence caused fear and distress throughout a local community or more widely
- The offence caused particular distress to the victim and/or the victim's family.

9. At the lower end of the scale, the aggravation may be regarded as less serious if:

- It was limited in scope or duration
- The offence was not motivated by hostility on the basis of race, religion, disability or sexual orientation, and the element of hostility or abuse was minor or incidental

10. In these guidelines, the specific racially or religiously aggravated offences under the Crime and Disorder Act 1998 are addressed on the same page as the 'basic offence'; the starting points and ranges indicated on the guideline relate to the 'basic' (i.e. non-aggravated) offence. The increase for the element of racial or religious aggravation may result in a sentence above the range; **this will not constitute a departure from the guideline for which reasons must be given.**

Environmental/health and safety offences

1. The main environmental protection offences are:

Summary of offence	Legislation	Maximum penalty
Depositing, recovering or disposing of waste without a site licence/permit or in breach of its conditions (covers fly-tipping)	Environmental Protection Act 1990, s.33	On summary conviction: £50,000 fine and/or 6 months imprisonment On indictment: unlimited fine and/or 5 years imprisonment
Polluting or solid waste matter entering controlled waters	Water Resources Act 1991, s.85	On summary conviction: £20,000 fine and/or 3 months imprisonment On indictment: unlimited fine and/or 2 years imprisonment
Failure to comply with the waste 'duty of care' (often associated with fly-tipping)	Environmental Protection Act 1990, s.34	On summary conviction: £5,000 fine On indictment: unlimited fine
Fishing with a rod and line without a licence	Salmon and Freshwater Fisheries Act 1975, s.27(a)	On summary conviction: level 4 fine
Failure to hold a permit for an activity (e.g. a landfill site) or failure to comply with condition of a permit	Pollution Prevention and Control Regulations 2000, regs 9(1), 32(1)(a) and (b) Environmental Permitting (England and Wales) Regulations 2007, regs. 12, 38(1)(a) and 38(1)(b)	On summary conviction: £20,000 fine On indictment: unlimited fine
Failure to comply with requirements associated with producing, transporting and managing hazardous wastes	Hazardous Waste Regulations (England and Wales) 2005, regs. 65 and 68	Offences under reg. 65 in connection with regs. 21-22, 24-26, 34, 35-44, 46 and schedule 7, 53, 54 and 55: On summary conviction: level 5 fine Other offences under regs. 65 or 68: On summary conviction: fine not exceeding statutory maximum On indictment: unlimited fine and/or 2 years imprisonment

2. The main health and safety offences are:

Offence	Legislation	Maximum penalty
Failing to comply with an improvement or prohibition notice, or a court remedy order	Health and Safety at Work etc Act 1974, ss.33(1)(g) and 33(1)(o)	On summary conviction: £20,000 fine and/or 6 months imprisonment On indictment: unlimited fine and/or 2 years imprisonment
Breaching general duties in Health and Safety at Work Act ss.2 to 6	Health and Safety at Work etc Act 1974, s.33(1)(a)	On summary conviction: £20,000 fine and/or 6 months imprisonment On indictment: unlimited fine and/or 2 years imprisonment
Breaching health and safety regulations or licensing conditions	Health and Safety at Work etc Act 1974, s.33(1)(c)	On summary conviction: £20,000 fine and/or 6 months imprisonment On indictment: unlimited fine and/or 2 years imprisonment

3. It is important to consult your legal adviser in these cases. The Court of Appeal gave guidance on health and safety sentencing in *R v Howe*¹ and *R v Balfour Beatty Infrastructure Services Ltd.*² These principles are relevant also to sentencing for environmental offences. In addition, refer to the environmental offences training materials on the Magistrates' Association website www.magistrates-association.org.uk

4. Offences under these Acts are serious, especially where the maximum penalty in a magistrates' court is £20,000 or above. Imprisonment is available for many offences. Particular care needs to be taken when considering whether to accept jurisdiction or to commit a case to the Crown Court, especially when the defendant is a large company (see paragraph 11 below).

Offence seriousness

5. Sentencers should assess offence seriousness following the approach set out in the Sentencing Guidelines Council's definitive guideline *Overarching Principles: Seriousness*, published 16 December 2004.

6. In some cases, much more or much less harm may result than could have been reasonably anticipated. In these circumstances, the Council guideline states that the offender's culpability should be the initial factor in assessing the seriousness of the offence.

7. The following factors may be particularly relevant to all environmental/health and safety offences, **but these lists are not exhaustive:**

Factors which may indicate higher than usual culpability:

- Offence deliberate or reckless breach of law rather than result of carelessness
- Action or lack of action prompted by financial motives (profit or cost-saving), for example by neglecting to take preventative measures or avoiding payment for relevant licence
- Regular or continuing breach, not isolated lapse
- Failure to respond to advice, cautions or warning from regulatory authority

¹ [1999] 2 Cr App R (S) 37 (CA)

² [2006] EWCA Crim 1586 (CA)

- Ignoring concerns raised by employees or others
- Offender has committed previous offences of a similar nature
- Offender exhibited obstructive or dismissive attitude to authorities
- Offender carrying out operations without an appropriate licence

Factors which may indicate greater than usual degree of harm:

- Death or serious injury or ill-health resulted from or risked by offence
- High degree of damage resulting from offence (but lack of actual damage does not render the offence merely technical; it is still serious if there is risk)
- Considerable potential for harm to workers or public
- Animal health or flora affected
- Extensive clean-up operation or other remedial steps required
- Other lawful activities interfered with
- In respect of offences of fly-tipping, tipping dangerous or offensive waste; tipping near housing, children's play areas, schools, livestock or environmentally sensitive sites; any escape of waste to streams or atmosphere

Factors which may indicate lower than usual culpability:

- Offender played a relatively minor role or had little personal responsibility
- Genuine and reasonable lack of awareness or understanding of specific regulations
- Isolated lapse

Matters of offender mitigation may include

- Offender's prompt reporting of offence and ready co-operation with regulatory authority
- Offender took steps to remedy the problem as soon as possible
- Good previous record

8. In the case of *Friskies Petcare (UK) Limited*³ it was recommended that the HSE should set out in writing the facts of the case and the aggravating features, and the defence should do likewise with the mitigating features, so as to assist the court in coming to the proper basis for sentence after a guilty plea. Where the plea is entered on an agreed basis, that should be set out in writing for the court.

The level of fine

9. A fine should be the starting point for sentencing both companies and individuals for these offences. Sentencers should determine the appropriate level of fine in accordance with the Criminal Justice Act 2003, which requires offence seriousness and the financial circumstances of the offender to be taken into account.

10. For both individual and corporate offenders, the level of fine should reflect the extent to which the offender fell below the required standard. The sentence should also take account of any economic gain from the offence; it should not be cheaper to offend than to take the appropriate precautions.

³ [2000] EWCA Crim 95

11. The following factors will be relevant when sentencing corporate offenders:

- the fine must be substantial enough to have a real economic impact which, together with the bad publicity arising from prosecution, will bring home to both management and shareholders the need to improve regulatory compliance;
- appropriate fines for large companies might be beyond the summary fines limit. In such circumstances the case should be dealt with in the Crown Court. Where larger companies are dealt with in a magistrates' court, the court should look to a starting point near the maximum fine level and then consider aggravating and mitigating factors;
- care should be taken to ensure that fines imposed on smaller companies are not beyond their capability to pay. The court might not wish the fine to result in the company not being able to pay for improved procedures or to cause the company to go out of business. Where necessary, the payment of fines could be spread over a longer period than the usual 12 months;
- there is no single measure of ability to pay in respect of corporate offenders; turnover, profitability and liquidity should all be considered. It is not usual for an expert accountant to be available in summary cases;
- if a company does not produce its accounts, the court can assume that the company can pay whatever fine the court imposes.

12. When sentencing public authorities, the court may have regard to the fact that a very substantial financial penalty may inhibit the performance of the public function that the body was set up to fulfil. This is not to suggest that public bodies are subject to a lesser standard of duty or care in safety and environmental matters, but it is proper for the court to take into account all the facts of the case, including how any financial penalty will be paid.⁴

Other sentencing options

13. A discharge will rarely be appropriate in these cases.

14. Compensation must be considered if there is a specific victim who has suffered injury, loss or damage. Under s.33B of the Environmental Protection Act 1990, a magistrates' court's power to impose compensation for clean-up costs is not limited to £5,000. Refer to pages 165-167 for further guidance on the approach to compensation.

15. Under section 42(1) of the Health and Safety at Work etc. Act 1974, the court may impose a remedial order in addition to or instead of imposing any punishment on the offender. Where the offence involves the acquisition or possession of an explosive article or substance, section 42(4) enables the court to order forfeiture of the explosive.

16. Where the offender is a director or senior manager of a company, the court may be able to exercise its power of disqualification under the Company Directors Disqualification Act 1986 (see page 171).

Consult your legal adviser for further guidance regarding the exercise of these powers.

Costs

17. The prosecution will normally claim the costs of investigation and presentation. These may be substantial and can incorporate time and activity expended on containing and making the area safe. The relevant principles are set out on page 175 above.

⁴ *R v Southampton University Hospital NHS Trust* [2006] EWCA Crim 2971 (CA)

Health and safety offences – Supplementary guidance

1. The Health and Safety (Offences) Act 2008 received Royal Assent on 16 October 2008 and came into effect on 16 January 2009. It changed the maximum penalty for certain health and safety offences contrary to section 33 of the 1974 Act committed after it came into effect, in particular making more offences imprisonable.

2. The effect of the Act is to:

- raise the maximum fine which may be imposed in magistrates' courts to £20,000 for more offences;
The power to impose a fine of up to £20,000 was already available in respect of some offences under the 1974 Act, and the Act extends this power to other offences that are considered to be comparable.
- make more offences imprisonable in both magistrates' courts and the Crown Court;
Imprisonment is now available for most offences contrary to section 33 of the 1974 Act.
- make an offence contrary to section 33(1)(f) triable either-way.

The table on page 181 has been amended to include changes made by the Act.

3. The range of offending contrary to section 33 is considerable and the changes will affect the sentencing of both individuals (increased maximum fines in a magistrates' court and more offences imprisonable) and organisations (increased maximum fines in a magistrates' court).

4. The seriousness of the offence should be assessed with reference to the general guidance provided in paragraphs 5 to 7 on pages 181-182 above; principles regarding the imposition of financial penalties are in paragraphs 9 to 12 on pages 182-183 and relate to both individuals and organisations. Where it is reasonable, previous convictions will aggravate the seriousness of an offence.¹

5. Since it has not been possible for guidelines to be produced which take account of the changes, this supplementary guidance seeks to assist courts in determining when to use custodial sentences by drawing together general principles concerning the use of custodial sentences derived from existing statutory provisions, Council guidelines and case law.

Approach to use of custodial sentences

6. A custodial sentence may be imposed only where a court determines that an offence was 'so serious' that neither a fine alone nor a community sentence can be justified:²

- such punishment should be reserved for the most serious cases;³
- even where the threshold is passed, a custodial sentence is not inevitable; custody may be avoided in light of personal mitigation or availability of a suitable community intervention;⁴
- if a custodial sentence is unavoidable, sentencers should consider whether it can be suspended;⁵
- if an immediate custodial sentence is imposed, it must be for the shortest term that is commensurate with the seriousness of the offence.⁶

1 Criminal Justice Act 2003, s.143(2)

2 *ibid.*, s.152(1)

3 *Overarching Principles: Seriousness*, paragraph 1.32, published December 2004

4 *ibid.*

5 *ibid.*, paragraph 1.33

6 Criminal Justice Act 2003, s.153(2)

7. A custodial sentence is most likely to be appropriate where both culpability and the risk of harm are high. In accordance with the factors set out in paragraph 7 on pages 181 and 182 above:

- culpability is likely to be high where the breach (or breaches) concerned were deliberate, repeated, large scale, highly organized, financially motivated and highly profitable, or combined any of these features;⁷
- a systemic failure to implement an effective safety system will be particularly significant. Any failure to respond to advice, cautions or warnings from regulatory authorities or to concerns raised by employees may be particularly significant⁸ – a court will need to consider the extent to which the later failure would not have occurred if proper action had been taken in response;
- harm will be high where death or serious injury or ill-health results from (or is risked by) the offender's conduct – the impact of the extent of harm has to be assessed in the light of the culpability of the offender.⁹ A court will need to consider with care the causal link between the failure to comply with the requirements and the harm caused or risked;
- an offence is likely to be more serious where there was a risk of harm to a larger number of people, especially if any (or all) of them are particularly vulnerable.¹⁰

⁷ *R v Kelleher* [2008] EWCA Crim 3055

⁸ *R v Howe and Son (Engineers) Ltd.*, [1999] 2 Cr App R (S) 37; *R v Kite* [1996] 2 Cr App R (S) 295

⁹ *Overarching Principles: Seriousness*, paragraph 1.17, published December 2004

¹⁰ *ibid.*, paragraph 1.23

Road traffic offences

Disqualification

Obligatory disqualification

1. Some offences carry obligatory disqualification for a minimum of 12 months.¹ The minimum period is automatically increased where there have been certain previous convictions and disqualifications.

2. An offender must be disqualified for **at least two years** if he or she has been disqualified two or more times for a period of at least 56 days in the three years preceding the commission of the offence.² The following disqualifications are to be disregarded for the purposes of this provision:

- interim disqualification;
- disqualification where vehicle used for the purpose of crime;
- disqualification for stealing or taking a vehicle or going equipped to steal or take a vehicle.

3. An offender must be disqualified for **at least three years** if he or she is convicted of one of the following offences and has within the ten years preceding the commission of the offence been convicted of any of these offences:³

- causing death by careless driving when under the influence of drink or drugs;
- driving or attempting to drive while unfit;
- driving or attempting to drive with excess alcohol;
- failing to provide a specimen (drive/attempting to drive).

4. The individual offence guidelines above indicate whether disqualification is mandatory for the offence and the applicable minimum period. **Consult your legal adviser for further guidance.**

5. The period of disqualification may be reduced or avoided if there are special reasons.⁴ These must relate to the offence; circumstances peculiar to the offender cannot constitute special reasons.⁵ The Court of Appeal has established that, to constitute a special reason, a matter must:⁶

- be a mitigating or extenuating circumstance;
- not amount in law to a defence to the charge;
- be directly connected with the commission of the offence;
- be one which the court ought properly to take into consideration when imposing sentence.

6. **Consult your legal adviser for further guidance on special reasons applications.**

¹ Road Traffic Offenders Act 1988, s.34

² *ibid.*, s.34(4)

³ *ibid.*, s.34(3)

⁴ *ibid.*, s.34(1)

⁵ *Whittal v Kirby* [1946] 2 All ER 552 (CA)

⁶ *R v Wickens* (1958) 42 Cr App R 436 (CA)

'Totting up' disqualification

7. Disqualification for a **minimum** of six months must be ordered if an offender incurs 12 penalty points or more within a three-year period.⁷ The minimum period may be automatically increased if the offender has been disqualified within the preceding three years. Totting up disqualifications, unlike other disqualifications, erase all penalty points.

8. The period of a totting up disqualification can be reduced or avoided for exceptional hardship or other mitigating circumstances. No account is to be taken of hardship that is not exceptional hardship or circumstances alleged to make the offence not serious. Any circumstances taken into account in the preceding three years to reduce or avoid a totting disqualification must be disregarded.⁸

9. Consult your legal adviser for further guidance on exceptional hardship applications.

Discretionary disqualification

10. Whenever an offender is convicted of an endorsable offence or of taking a vehicle without consent, the court has a discretionary power to disqualify instead of imposing penalty points. The individual offence guidelines above indicate whether the offence is endorsable and the number or range of penalty points it carries.

11. The number of variable points or the period of disqualification should reflect the seriousness of the offence. Some of the individual offence guidelines above include penalty points and/or periods of disqualification in the sentence starting points and ranges; however, the court is not precluded from sentencing outside the range where the facts justify it. Where a disqualification is for less than 56 days, there are some differences in effect compared with disqualification for a longer period; in particular, the licence will automatically come back into effect at the end of the disqualification period (instead of requiring application by the driver) and the disqualification is not taken into account for the purpose of increasing subsequent obligatory periods of disqualification.⁹

12. In some cases in which the court is considering discretionary disqualification, the offender may already have sufficient penalty points on his or her licence that he or she would be liable to a 'totting up' disqualification if further points were imposed. In these circumstances, the court should impose penalty points rather than discretionary disqualification so that the minimum totting up disqualification period applies (see paragraph 7 above).

Disqualification until a test is passed

13. Where an offender is convicted of dangerous driving, the court must order disqualification until an extended driving test is passed.

14. The court has discretion to disqualify until a test is passed where an offender is convicted of any endorsable offence.¹⁰ Where disqualification is obligatory, the extended test applies. In other cases, it will be the ordinary test.

15. An offender disqualified as a 'totter' under the penalty points provisions may also be ordered to re-take a driving test; in this case, the extended test applies.

16. The discretion to order a re-test is likely to be exercised where there is evidence of inexperience, incompetence or infirmity, or the disqualification period is lengthy (that is, the offender is going to be 'off the road' for a considerable time).

⁷ Road Traffic Offenders Act 1988, s.35

⁸ *ibid.*

⁹ *ibid.*, ss.34(4), 35(2), 37(1A)

¹⁰ *ibid.*, s.36(4)

Reduced period of disqualification for completion of rehabilitation course

17. Where an offender is disqualified for 12 months or more in respect of an alcohol-related driving offence, the court may order that the period of disqualification will be reduced if the offender satisfactorily completes an approved rehabilitation course.¹¹

18. Before offering an offender the opportunity to attend a course, the court must be satisfied that an approved course is available and must inform the offender of the effect of the order, the fees that the offender is required to pay, and when he or she must pay them.

19. The court should also explain that the offender may be required to satisfy the Secretary of State that he or she does not have a drink problem and is fit to drive before the offender's licence will be returned at the end of the disqualification period.¹²

20. In general, a court should consider offering the opportunity to attend a course to all offenders convicted of a relevant offence for the first time. The court should be willing to consider offering an offender the opportunity to attend a second course where it considers there are good reasons. It will not usually be appropriate to give an offender the opportunity to attend a third course.

21. The reduction must be at least three months but cannot be more than one quarter of the total period of disqualification:

- a period of 12 months disqualification must be reduced to nine months;
- in other cases, a reduction of one week should be made for every month of the disqualification so that, for example, a disqualification of 24 months will be reduced by 24 weeks.

22. When it makes the order, the court must specify a date for completion of the course which is at least two months before the end of the reduced period of disqualification.

Disqualification in the offender's absence

23. A court is able to disqualify an offender in absence provided that he or she has been given adequate notice of the hearing and that disqualification is to be considered.¹³ It is recommended, however, that the court should avoid exercising this power wherever possible unless it is sure that the offender is aware of the hearing and the likely imposition of disqualification. This is because an offender who is disqualified in absence commits an offence by driving from the time the order is made, even if he or she has not yet received notification of it, and, as a result of the disqualification, is likely to be uninsured in relation to any injury or damage caused.

New drivers

24. Drivers who incur six points or more during the two-year probationary period after passing the driving test will have their licence revoked automatically by the Secretary of State; they will be able to drive only after application for a provisional licence pending the passing of a further test.¹⁴

25. An offender liable for an endorsement which will cause the licence to be revoked under the new drivers' provisions may ask the court to disqualify rather than impose points. This will avoid the requirement to take a further test. Generally, this would be inappropriate since it would circumvent the clear intention of Parliament.

¹¹ Road Traffic Offenders Act 1988, s.34A

¹² Road Traffic Act 1988, s.94 and Motor Vehicles (Driving Licences) Regulations 1999, reg.74

¹³ Magistrates' Courts Act 1980, s.11(4)

¹⁴ Road Traffic (New Drivers) Act 1995

Dangerous offenders

1. The Criminal Justice Act 2003 established a new regime for dealing with dangerous offenders. The provisions apply where an offender is convicted of a specified violent or sexual offence. They have been substantially amended by the Criminal Justice and Immigration Act 2008.
2. Specified offences are listed in schedule 15 to the Act and include affray, assault occasioning actual bodily harm, putting people in fear of violence, sexual assault and violent disorder. The individual offence guidelines above indicate whether the offence is specified under the Act. A specified offence which (in the case of a person aged 18 years or over) is punishable with a maximum of life imprisonment or imprisonment for 10 years or more is defined as a 'serious offence'.
3. Where an offender is convicted of a specified offence that is not a 'serious offence', the court may impose an extended sentence of imprisonment.¹
4. Where an offender is convicted of a specified offence that is a 'serious offence', the court may impose a life sentence or imprisonment for public protection.²
5. All these sentences may be imposed only in the Crown Court and only if the court is satisfied that there is a significant risk of serious harm from the offender committing a further specified offence. Even in such circumstances, a court has a discretion whether or not to impose a sentence under the dangerous offender provisions.
6. A significant change has been the requirement that (except where the offender has a previous conviction for one of the offences listed in schedule 15A to the 2003 Act)³ a sentence under these provisions may be imposed only if the equivalent determinate sentence would have been at least 4 years.
7. Accordingly, it is very unlikely that a magistrates' court will need to consider these provisions specifically since an offence likely to result in a sentence of 4 years or more will be committed for trial or sentence under other provisions.
8. **Consult your legal adviser for further guidance.**

¹ Criminal Justice Act 2003, s.227 (as amended)

² *ibid.*, s.225 (as amended)

³ as inserted by Schedule 5 to the Criminal Justice and Immigration Act 2008

Informal warnings, cannabis warnings and simple cautions

1. There are several alternatives to formal charges available to police, including informal warnings, cannabis warnings and simple cautions.
2. A cannabis warning may be given where the offender is found in possession of a small amount of cannabis consistent with personal use and the offender admits the elements of the offence.
3. A simple caution may be issued where there is evidence that the offender has committed an offence, the offender admits to the offence, and the offender agrees to being given the caution.
4. When sentencing an offender who has received a warning or simple caution on a previous occasion:
 - the warning or simple caution is not a previous conviction and, therefore, is not a statutory aggravating factor;
 - the earlier warning or simple caution does not increase the seriousness of the current offence.

Conditional cautions

1. The Criminal Justice Act 2003 empowers the Crown Prosecution Service to issue a conditional caution, which requires an offender to comply with rehabilitative and/or reparative conditions, as an alternative to prosecution. Before the caution can be given, the offender must admit the offence and consent to the conditions.

Approach to sentencing for offence for which offender was cautioned but failed to comply with conditions

2. If the offender fails, without reasonable cause, to comply with the conditional caution, he or she may be prosecuted for the original offence. When sentencing in such a case:
 - the offender's non-compliance with the conditional caution does not increase the seriousness of the original offence and must not be regarded as an aggravating factor;
 - the offender's non-compliance may be relevant to selection of the type of sentence. For example, it may indicate that it is inappropriate to include certain requirements as part of a community order. The circumstances of the offender's failure to satisfy the conditions, and any partial compliance, will be relevant to this assessment.

Approach to sentencing for later offence where offender has had a previous conditional caution

3. When sentencing an offender who has received a conditional caution in respect of an earlier offence:
 - a conditional caution is not a previous conviction and, therefore, is not a statutory aggravating factor;
 - the earlier conditional caution does not increase the level of seriousness of the current offence;
 - nevertheless, the offender's response to the caution may 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.

Penalty notices – fixed penalty notices and penalty notices for disorder

1. Penalty notices may be issued as an alternative to prosecution in respect of a range of offences. Unlike conditional cautions, an admission of guilt is not a prerequisite to issuing a penalty notice.
2. 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;
 - fails to pay the penalty within the period stipulated in the notice and the prosecutor decides to proceed with charges.¹

Approach to sentencing for offence for which penalty notice was available

3. 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 above (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 was not offered or taken up for reasons unconnected with the offence itself, such as administrative difficulties, 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. A list of offences for which penalty notices are available, and the amount of the penalty, is set out in Annex B.

Approach to sentencing for later offence where offender has had previous penalty notices

4. 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.

¹ 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

Pre-sentence reports

1. The purpose of a pre-sentence report ('PSR') is to provide information to help the court decide on the most suitable sentence. In relation to an offender aged 18 or over, unless the court considers a report to be unnecessary, it is required to request a report before deciding:

- that the community or custody threshold is passed;
- what is the shortest term of a custodial sentence that is commensurate with the seriousness of the offence;
- whether the restrictions on liberty within a community order are commensurate with the seriousness of the offence; and
- whether the requirements are suitable for the offender.¹

2. A report should not normally be requested where the court considers that it is appropriate to impose a fine.

3. A report may be oral or written.

4. Written reports may be either:

Fast delivery reports ('FDR')

- Completed without a full OASys assessment.
- Where community orders are being considered, generally appropriate for low or medium seriousness cases and may be appropriate in some high seriousness cases.
- Should normally be available within 24 hours.

Standard delivery reports ('SDR')

- Based on a full OASys assessment.
- Generally appropriate where a custodial sentence is being considered, although in some straightforward cases a fast delivery PSR may be sufficient.
- Where community orders are being considered, generally appropriate for high seriousness cases.
- Should normally be available within 15 working days; 10 working days if the offender is in custody.

Probation staff are able to determine the most appropriate type of report based on the circumstances of the case and the requirements of the court.

5. Every report should contain:²

- basic facts about the offender and the sources used to prepare the report;
- an offence analysis;
- an assessment of the offender;
- an assessment of the risk of harm to the public and the likelihood of re-offending;
- a sentencing proposal.

¹ Criminal Justice Act 2003, ss.156(3) and 156(4)

² Probation Bench Handbook (2005)

Victim personal statements

1. Victim personal statements give victims a formal opportunity to say how a crime has affected them. Where the victim has chosen to make such a statement, a court should consider and take it into account prior to passing sentence.
2. The Consolidated Criminal Practice Direction (as amended March 2007) emphasises that:
 - evidence of the effects of an offence on the victim must be in the form of a witness statement under section 9 of the Criminal Justice Act 1967 or an expert's report;
 - the statement must be served on the defence prior to sentence;
 - except where inferences can properly be drawn from the nature of or circumstances surrounding the offence, the court must not make assumptions unsupported by evidence about the effects of an offence on the victim;
 - the court must pass what it judges to be the appropriate sentence having regard to the circumstances of the offence and the offender, taking into account, so far as the court considers it appropriate, the consequences to the victim;
 - the opinions of the victim or the victim's close relatives as to what the sentence should be are not relevant.
3. For cases involving sexual offences, see also page 165 regarding the relevance of the victim's views to any compensation order that may be imposed.

Annex A: Availability of ancillary orders

The lists below identify offences covered in the MCSG for which particular ancillary orders are available. **In all cases, consult your legal adviser regarding available orders and their specific requirements and effects.**

Football banning orders – Football Spectators Act 1989, s.14A

Available on conviction of a 'relevant offence', listed in schedule 1 of the Football Spectators Act 1989. These include:

- possession of alcohol or being drunk while entering/trying to enter ground – Sporting Events (Control of Alcohol etc) Act 1985, s.2;
- disorderly behaviour – Public Order Act 1986, s.5 – committed:
 - (a) during a period relevant to a football match (see below) at any premises while the offender was at, or was entering or leaving or trying to enter or leave, the premises;
 - (b) on a journey to or from a football match and the court makes a declaration that the offence related to football matches; or
 - (c) during a period relevant to a football match (see below) and the court makes a declaration that the offence related to that match;
- any offence involving the use or threat of violence towards another person committed:
 - (a) during a period relevant to a football match (see below) at any premises while the offender was at, or was entering or leaving or trying to enter or leave, the premises;
 - (b) on a journey to or from a football match and the court makes a declaration that the offence related to football matches; or
 - (c) during a period relevant to a football match (see below) and the court makes a declaration that the offence related to that match;
- any offence involving the use or threat of violence towards property committed:
 - (a) during a period relevant to a football match (see below) at any premises while the offender was at, or was entering or leaving or trying to enter or leave, the premises;
 - (b) on a journey to or from a football match and the court makes a declaration that the offence related to football matches; or
 - (c) during a period relevant to a football match (see below) and the court makes a declaration that the offence related to that match;
- any offence involving the use, carrying or possession of an offensive weapon or firearm committed:
 - (a) during a period relevant to a football match (see below) at any premises while the offender was at, or was entering or leaving or trying to enter or leave, the premises;
 - (b) on a journey to or from a football match and the court makes a declaration that the offence related to football matches; or
 - (c) during a period relevant to a football match (see below) and the court makes a declaration that the offence related to that match;

- drunk and disorderly – Criminal Justice Act 1967, s.91(1) – committed on a journey to or from a football match and the court makes a declaration that the offence related to football matches;
- driving/attempting to drive when unfit through drink or drugs – Road Traffic Act 1988, s.4 – committed on a journey to or from a football match and the court makes a declaration that the offence related to football matches;
- in charge of a vehicle when unfit through drink or drugs – Road Traffic Act 1988, s.4 – committed on a journey to or from a football match and the court makes a declaration that the offence related to football matches;
- driving/attempting to drive with excess alcohol – Road Traffic Act 1988, s.5 – committed on a journey to or from a football match and the court makes a declaration that the offence related to football matches;
- in charge of a vehicle with excess alcohol – Road Traffic Act 1988, s.5 – committed on a journey to or from a football match and the court makes a declaration that the offence related to football matches;
- any offence under the Football (Offences) Act 1991;
- unauthorised sale of tickets – Criminal Justice and Public Order Act 1994, s.166.

The following periods are 'relevant' to a football match:

(a) the period beginning:

- (i) two hours before the start of the match; or
- (ii) two hours before the time at which it is advertised to start; or
- (iii) with the time at which spectators are first admitted to the premises,

whichever is the earliest, and ending one hour after the end of the match;

(b) where a match advertised to start at a particular time on a particular day is postponed to a later day, or does not take place, the period in the advertised day beginning two hours before and ending one hour after that time.

Forfeiture or suspension of personal liquor licence – Licensing Act 2003, s.129

Available on conviction of a 'relevant offence', listed in schedule 4 of the Licensing Act 2003. These include:

- an offence under the Licensing Act 2003;
- an offence under the Firearms Act 1968;
- theft – Theft Act 1968, s.1;
- burglary – Theft Act 1968, s.9;
- abstracting electricity – Theft Act 1968, s.13;
- handling stolen goods – Theft Act 1968, s.22;
- going equipped for theft – Theft Act 1968, s.25;
- production of a controlled drug – Misuse of Drugs Act 1971, s.4(2);

- supply of a controlled drug – Misuse of Drugs Act 1971, s.4(3);
- possession of a controlled drug with intent to supply – Misuse of Drugs Act 1971, s.5(3);
- evasion of duty – Customs and Excise Management Act 1979, s.170 (excluding s.170(1)(a));
- driving/attempting to drive when unfit through drink or drugs – Road Traffic Act 1988, s.4;
- in charge of a vehicle when unfit through drink or drugs – Road Traffic Act 1988, s.4;
- driving/attempting to drive with excess alcohol – Road Traffic Act 1988, s.5;
- in charge of a vehicle with excess alcohol – Road Traffic Act 1988, s.5;
- unauthorised use of trade mark where the goods in question are or include alcohol – Trade Marks Act 1994, ss.92(1) and 92(2);
- sexual assault – Sexual Offences Act 2003, s.3;
- exploitation of prostitution – Sexual Offences Act 2003, ss.52 and 53;
- exposure – Sexual Offences Act 2003, s.66;
- voyeurism – Sexual Offences Act 2003, s.67;
- a violent offence, being any offence which leads, or is intended or likely to lead, to death or to physical injury.

Sexual offences prevention orders

Available in respect of an offence listed in schedule 3 or 5 of the Sexual Offences Act 2003. These include:

- sexual assault – Sexual Offences Act 2003, s.3 – provided that:
 - (a) where the offender was under 18, he or she has been sentenced to at least 12 months' imprisonment;
 - (b) in any other case:
 - (i) the victim was under 18; or
 - (ii) the offender has been sentenced to a term of imprisonment, detained in a hospital, or made the subject of a community sentence of at least 12 months;
- exposure – Sexual Offences Act 2003, s.66 – provided that:
 - (a) where the offender was under 18, he or she has been sentenced to at least 12 months' imprisonment;
 - (b) in any other case:
 - (i) the victim was under 18; or
 - (ii) the offender has been sentenced to a term of imprisonment, detained in a hospital, or made the subject of a community sentence of at least 12 months;

- voyeurism – Sexual Offences Act 2003, s.67 – provided that:
 - (a) where the offender was under 18, he or she has been sentenced to at least 12 months' imprisonment;
 - (b) in any other case:
 - (i) the victim was under 18; or
 - (ii) the offender has been sentenced to a term of imprisonment, detained in a hospital, or made the subject of a community sentence of at least 12 months;
- threats to kill – Offences against the Person Act 1861, s.16;
- wounding/causing grievous bodily harm – Offences against the Person Act 1861, s.20;
- assault with intent to resist arrest – Offences against the Person Act 1861, s.38;
- assault occasioning actual bodily harm – Offences against the Person Act 1861, s.47;
- burglary with intent to inflict grievous bodily harm or to do unlawful damage to a building/anything within it – Theft Act 1968, s.9;
- arson – Criminal Damage Act 1971, s.1;
- violent disorder – Public Order Act 1986, s.2;
- affray – Public Order Act 1986, s.3;
- harassment – conduct causing fear of violence – Protection from Harassment Act 1994, s.4;
- racially or religiously aggravated wounding/causing grievous bodily harm – Crime and Disorder Act 1998, s.29;
- racially or religiously aggravated assault occasioning actual bodily harm – Crime and Disorder Act 1998, s.29;
- racially or religiously aggravated common assault – Crime and Disorder Act 1998, s.29;
- racially or religiously aggravated threatening behaviour – Crime and Disorder Act 1998, s.31(1)(a);
- racially or religiously aggravated disorderly behaviour with intent to cause harassment, alarm or distress – Crime and Disorder Act 1998, s.31(1)(b);
- exploitation of prostitution – Sexual Offences Act 2003, ss.52 and 53.

Annex B: Offences for which penalty notices are available

The tables below list the offences covered in the MCSG for which penalty notices are available and the amount of the penalty. **Consult your legal adviser for further guidance.**

Penalty notices for disorder

Offence	Legislation	Amount
Criminal damage (where damage under £500 in value, and not normally where damage over £300)	Criminal Damage Act 1971, s.1	£80
Disorderly behaviour	Public Order Act 1986, s.5	£80
Drunk and disorderly	Criminal Justice Act 1967, s.91	£80
Sale of alcohol to drunk person on relevant premises (not including off-licenses)	Licensing Act 2003, s.141	£80
Sale of alcohol to person under 18 (staff only; licensees should be subject of a summons)	Licensing Act 2003, s.146	£80
Theft from a shop (where goods under £200 in value, and not normally where goods over £100)	Theft Act 1968, s.1	£80

Fixed penalty notices

Offence	Legislation	Amount	Penalty points
Brakes, steering or tyres defective	Road Traffic Act 1988, s.41A	£60	3
Breach of other construction and use requirements	Road Traffic Act 1988, s.42	£60	3
Driving other than in accordance with licence	Road Traffic Act 1988, s.87(1)	£60	3
Failing to comply with police officer signal	Road Traffic Act 1988, s.35	£30	3
Failing to comply with traffic sign	Road Traffic Act 1988, s.36	£60	3
Failing to supply details of driver's identity	Road Traffic Act 1988, s.172	£120	6
No insurance	Road Traffic Act 1988, s.143	£200	6
No test certificate	Road Traffic Act 1988, s.47	£30	–
Overloading/exceeding axle weight	Road Traffic Act 1988, s.41B	£30	–
Pelican/zebra crossing contravention	Road Traffic Regulation Act 1984, s.25(5)	£60	3
Railway fare evasion (where penalty notice scheme in operation by train operator)	Railways (Penalty Fares) Regulations 1994	£20 or twice the full single fare to next stop, whichever is greater	–
Seat belt offences	Road Traffic Act 1988, s.14	£30	–
School non-attendance	Education Act 1996, s.444(1)	£50 if paid within 28 days; £100 if paid within 42 days	–
Speeding	Road Traffic Regulation Act 1984, s.89(1)	£60	3
Using hand-held mobile phone while driving	Road Traffic Act 1988, s.41D	£60	3
Using vehicle in dangerous condition	Road Traffic Act 1988, s.40A	£60	3

Sentencing structure

1. Offence seriousness (culpability and harm)

A. Identify the appropriate starting point

- Consider which of the examples of offence activity corresponds most closely to the circumstances of the case to identify the appropriate **starting point**.
- Starting points are based on a **first time offender pleading not guilty**.
- Refer to the following where starting point is, or **range** includes, a:
 - (i) fine – pages 148-155;
 - (ii) community order – pages 160-162;
 - (iii) custodial sentence – pages 163-164.
- Refer to pages 145-146 for the meaning of the terms 'starting point', 'range' and 'first time offender'.

1. Offence seriousness (culpability and harm)

B. Consider the effect of aggravating and mitigating factors

- Move up or down from the starting point to reflect aggravating or mitigating factors that affect the seriousness of the offence to reach a provisional sentence.
- Common aggravating and mitigating factors are set out overleaf; relevant factors are also identified in the individual offence guidelines. **These lists are not exhaustive**.
- Do not double-count any aggravating or mitigating factors in the description of the activity used to reach the starting point.
- The **range** is the bracket into which the provisional sentence will normally fall but the court is not precluded from going outside the range where the facts justify it.
- Previous convictions which aggravate the seriousness of the current offence may take the provisional sentence beyond the range, especially if there are significant other aggravating factors present.

2. Form a preliminary view of the appropriate sentence, then consider offender mitigation

- Matters of offender mitigation may include remorse and admissions to police in interview.

3. Consider a reduction for a guilty plea

- Apply the sliding scale reduction for a guilty plea to punitive elements of the sentence - refer to page 17.
- Application of the reduction may take the sentence below the range in some cases.

4. Consider ancillary orders, including compensation

- Refer to pages 168-174 and Annex A for guidance on available ancillary orders.
- Consider compensation in every case where the offending has resulted in personal injury, loss or damage – give reasons if order not made – see pages 165-167.

5. Decide sentence

Give reasons

- Review the total sentence to ensure that it is proportionate to the offending behaviour and properly balanced.
- Give reasons for the sentence passed, including any ancillary orders.
- State if the sentence has been reduced to reflect a guilty plea; indicate what the sentence would otherwise have been.
- Explain if the sentence is of a different kind or outside the range indicated in the guidelines.

List of aggravating and mitigating factors

Taken from Sentencing Guidelines Council Guideline

Overarching Principles: Seriousness

Aggravating factors

Factors indicating higher culpability:

- Offence committed whilst on bail for other offences
- Failure to respond to previous sentences
- 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 based on the victim's disability (or presumed disability)
- Previous conviction(s), particularly where a pattern of repeat offending is disclosed
- Planning of an offence
- An intention to commit more serious harm than actually resulted from the offence
- Offenders operating in groups or gangs
- 'Professional' offending
- Commission of the offence for financial gain (where this is not inherent in the offence itself)
- High level of profit from the offence
- An attempt to conceal or dispose of evidence
- Failure to respond to warnings or concerns expressed by others about the offender's behaviour
- Offence committed whilst on licence
- Offence motivated by hostility towards a minority group, or a member or members of it
- Deliberate targeting of vulnerable victim(s)
- Commission of an offence while under the influence of alcohol or drugs
- Use of a weapon to frighten or injure victim
- Deliberate and gratuitous violence or damage to property, over and above what is needed to carry out the offence
- Abuse of power
- Abuse of a position of trust

Factors indicating a more than usually serious degree of harm:

- Multiple victims
- An especially serious physical or psychological effect on the victim, even if unintended
- A sustained assault or repeated assaults on the same victim
- Victim is particularly vulnerable
- Location of the offence (for example, in an isolated place)
- Offence is committed against those working in the public sector or providing a service to the public
- Presence of others e.g. relatives, especially children or partner of the victim
- Additional degradation of the victim (e.g. taking photographs of a victim as part of a sexual offence)
- 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)

Mitigating factors

Factors indicating lower culpability:

- A greater degree of provocation than normally expected
- Mental illness or disability
- Youth or age, where it affects the responsibility of the individual defendant
- The fact that the offender played only a minor role in the offence

Offender mitigation

- Genuine remorse
- Admissions to police in interview
- Ready co-operation with authorities

