

Fraud, Bribery and Money Laundering Offences Definitive Guideline

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Applicability of guideline

In accordance with section 120 of the Coroners and Justice Act 2009, the Sentencing Council issues this definitive guideline. It applies to all individual offenders aged 18 and older and to organisations who are sentenced on or after 1 October 2014, regardless of the date of the offence.

Section 125(1) of the Coroners and Justice Act 2009 provides that when sentencing offences committed after 6 April 2010:

“Every court –

- (a) must, in sentencing an offender, follow any sentencing guideline which is relevant to the offender’s case, and
- (b) must, in exercising any other function relating to the sentencing of offenders, follow any sentencing guidelines which are relevant to the exercise of the function,

unless the court is satisfied that it would be contrary to the interests of justice to do so.”

This guideline applies only to individual offenders aged 18 and older or organisations. General principles to be considered in the sentencing of youths are in the Sentencing Guidelines Council’s definitive guideline, *Overarching Principles – Sentencing Youths*.

Structure, ranges and starting points

For the purposes of section 125(3)–(4) Coroners and Justice Act 2009, the guideline specifies *offence ranges* – the range of sentences appropriate for each type of offence. Within each offence, the Council has specified a number of *categories* which reflect varying degrees of seriousness. The offence range is split into *category ranges* – sentences appropriate for each level of seriousness. The Council has also identified a starting point within each category.

Starting points define the position within a category range from which to start calculating the provisional sentence. The court should consider further features of the offence or the offender that warrant adjustment of the sentence within the range, including the aggravating and mitigating factors set out at step two.¹ Starting points and ranges apply to all offenders, whether they have pleaded guilty or been convicted after trial. Credit for a guilty plea is taken into consideration only after the appropriate sentence has been identified.²

Information on community orders and fine bands is set out in the annex at page 54.

¹ Aggravating and mitigating factors are at step four in the guideline for organisations. In the guideline for organisations, having identified a provisional sentence within the range at step four, the court is required to consider a further set of factors that may require a final adjustment to the sentence at step five
² In the guideline for organisations, guilty pleas are considered at step seven; in the guidelines for individuals, guilty pleas are considered at step four

Fraud

Fraud by false representation, fraud by failing to disclose information, fraud by abuse of position

Fraud Act 2006 (section 1)

Triable either way

Conspiracy to defraud

Common law

Triable on indictment only

Maximum: 10 years' custody

Offence range: Discharge – 8 years' custody

False accounting

Theft Act 1968 (section 17)

Triable either way

Maximum: 7 years' custody

Offence range: Discharge – 6 years and 6 months' custody

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STEP ONE**Determining the offence category**

The court should determine the offence category with reference to the tables below. In order to determine the category the court should assess **culpability** and **harm**.

The level of **culpability** is determined by weighing up all the factors of the case to determine the offender's role and the extent to which the offending was planned and the sophistication with which it was carried out.

Culpability demonstrated by one or more of the following:**A – High culpability**

A leading role where offending is part of a group activity

Involvement of others through pressure, influence

Abuse of position of power or trust or responsibility

Sophisticated nature of offence/significant planning

Fraudulent activity conducted over sustained period of time

Large number of victims

Deliberately targeting victim on basis of vulnerability

B – Medium culpability

Other cases where characteristics for categories A or C are not present

A significant role where offending is part of a group activity

C – Lesser culpability

Involved through coercion, intimidation or exploitation

Not motivated by personal gain

Peripheral role in organised fraud

Opportunistic 'one-off' offence; very little or no planning

Limited awareness or understanding of the extent of fraudulent activity

Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

Harm is initially assessed by the actual, intended or risked loss as may arise from the offence.

The values in the table below are to be used for **actual** or **intended** loss only.

Intended loss relates to offences where circumstances prevent the actual loss that is intended to be caused by the fraudulent activity.

Risk of loss (for instance in mortgage frauds) involves consideration of both the likelihood of harm occurring and the extent of it if it does. Risk of loss is less serious than actual or intended loss. Where the offence has caused risk of loss but no (or much less) actual loss the normal approach is to move down to the corresponding point in the next category. This may not be appropriate if either the likelihood or extent of risked loss is particularly high.

| Harm A – Loss caused or intended | | |
|---|---|------------------------------------|
| Category 1 | £500,000 or more | Starting point based on £1 million |
| Category 2 | £100,000 – £500,000 or Risk or category 1 harm | Starting point based on £300,000 |
| Category 3 | £20,000 – £100,000 or Risk of category 2 harm | Starting point based on £50,000 |
| Category 4 | £5,000 – £20,000 or Risk of category 3 harm | Starting point based on £12,500 |
| Category 5 | Less than £5,000 or Risk of category 4 harm | Starting point based on £2,500 |
| Risk of category 5 harm, move down the range within the category | | |

| Harm B – Victim impact demonstrated by one or more of the following: | |
|---|--|
| The court should then take into account the level of harm caused to the victim(s) or others to determine whether it warrants the sentence being moved up to the corresponding point in the next category or further up the range of the initial category. | |
| High impact | – move up a category; if in category 1 move up the range |
| | Serious detrimental effect on the victim whether financial or otherwise, for example substantial damage to credit rating |
| | Victim particularly vulnerable (due to factors including but not limited to their age, financial circumstances, mental capacity) |
| Medium impact | – move upwards within the category range |
| | Considerable detrimental effect on the victim whether financial or otherwise |
| Lesser impact | – no adjustment |
| | Some detrimental impact on victim, whether financial or otherwise |

STEP TWO**Starting point and category range**

Having determined the category at step one, the court should use the appropriate starting point (as adjusted in accordance with step one above) to reach a sentence within the category range in the table below. The starting point applies to all offenders irrespective of plea or previous convictions.

Where the value is larger or smaller than the amount on which the starting point is based, this should lead to upward or downward adjustment as appropriate.

Where the value greatly exceeds the amount of the starting point in category 1, it may be appropriate to move outside the identified range.

TABLE 1
Section 1 Fraud Act 2006
conspiracy to defraud
Maximum: 10 years' custody

| Harm | Culpability | | |
|---|--|--|--|
| | A | B | C |
| Category 1 £500,000 or more | Starting point 7 years' custody | Starting point 5 years' custody | Starting point 3 years' custody |
| Starting point based on £1 million | Category range 5 – 8 years' custody | Category range 3 – 6 years' custody | Category range 18 months' – 4 years' custody |
| Category 2 £100,000–£500,000 | Starting point 5 years' custody | Starting point 3 years' custody | Starting point 18 months' custody |
| Starting point based on £300,000 | Category range 3 – 6 years' custody | Category range 18 months' – 4 years' custody | Category range 26 weeks' – 3 years' custody |
| Category 3 £20,000 - £100,000 | Starting point 3 years' custody | Starting point 18 months' custody | Starting point 26 weeks' custody |
| Starting point based on £50,000 | Category range 18 months' – 4 years' custody | Category range 26 weeks' – 3 years' custody | Category range Medium level community order – 1 year's custody |
| Category 4 £5,000- £20,000 | Starting point 18 months' custody | Starting point 26 weeks' custody | Starting point Medium level community order |
| Starting point based on £12,500 | Category range 26 weeks' – 3 years' custody | Category range Medium level community order – 1 year's custody | Category range Band B fine – High level community order |
| Category 5 Less than £5,000 | Starting point 36 weeks' custody | Starting point Medium level community order | Starting point Band B fine |
| Starting point based on £2,500 | Category range High level community order – 1 year's custody | Category range Band B fine – 26 weeks' custody | Category range Discharge – Medium level community order |

TABLE 2
Section 17 Theft Act 1968: false accounting
 Maximum: 7 years' custody

| Harm | Culpability | | |
|--|---|---|--|
| | A | B | C |
| Category 1 £500,000 or more | Starting point 5 years 6 months' custody | Starting point 4 years' custody | Starting point 2 years 6 months' custody |
| Starting point based on £1 million | Category range 4 years' – 6 years 6 months' custody | Category range 2 years 6 months' – 5 years' custody | Category range 15 months' – 3 years 6 months' custody |
| Category 2 £100,000–£500,000 | Starting point 4 years' custody | Starting point 2 years 6 months' custody | Starting point 15 months' custody |
| Starting point based on £300,000 | Category range 2 years 6 months' – 5 years' custody | Category range 15 months' – 3 years 6 months' custody | Category range 26 weeks' – 2 years 6 months' custody |
| Category 3 £20,000–£100,000 | Starting point 2 years 6 months' custody | Starting point 15 months' custody | Starting point High level community order |
| Starting point based on £50,000 | Category range 15 months' – 3 years 6 months' custody | Category range High level community order – 2 years 6 months' custody | Category range Low level community order – 36 weeks' custody |
| Category 4 £5,000–£20,000 | Starting point 15 months' custody | Starting point High level community order | Starting point Low level community order |
| Starting point based on £12,500 | Category range High level community order – 2 years 6 months' custody | Category range Low level community order – 36 weeks' custody | Category range Band B fine – Medium level community order |
| Category 5 Less than £5,000 | Starting point 26 weeks' custody | Starting point Low level community order | Starting point Band B fine |
| Starting point based on £2,500 | Category range Medium level community order – 36 weeks' custody | Category range Band B fine – Medium level community order | Category range Discharge – Low level community order |

See page 10.

The table below contains a non-exhaustive list of additional factual elements providing the context of the offence and factors relating to the offender.

Identify whether any combination of these or other relevant factors should result in an upward or downward adjustment from the sentence arrived at so far.

Consecutive sentences for multiple offences may be appropriate where large sums are involved.

Factors increasing seriousness

Statutory aggravating factors:

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

Offence committed whilst on bail

Other aggravating factors:

Steps taken to prevent the victim reporting or obtaining assistance and/or from assisting or supporting the prosecution

Attempts to conceal/dispose of evidence

Established evidence of community/wider impact

Failure to comply with current court orders

Offence committed on licence

Offences taken into consideration

Failure to respond to warnings about behaviour

Offences committed across borders

Blame wrongly placed on others

Factors reducing seriousness or reflecting personal mitigation

No previous convictions **or** no relevant/recent convictions

Remorse

Good character and/or exemplary conduct

Little or no prospect of success

Serious medical conditions requiring urgent, intensive or long-term treatment

Age and/or lack of maturity where it affects the responsibility of the offender

Lapse of time since apprehension where this does not arise from the conduct of the offender

Mental disorder or learning disability

Sole or primary carer for dependent relatives

Offender co-operated with investigation, made early admissions and/or voluntarily reported offending

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

Activity originally legitimate

See page 11.

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STEP THREE**Consider any factors which indicate a reduction, such as assistance to the prosecution**

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

STEP FOUR**Reduction for guilty pleas**

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

STEP FIVE**Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour.

STEP SIX**Confiscation, compensation and ancillary orders**

The court must proceed with a view to making a confiscation order if it is asked to do so by the prosecutor or if the court believes it is appropriate for it to do so.

Where the offence has resulted in loss or damage the court must consider whether to make a compensation order.

If the court makes both a confiscation order and an order for compensation and the court believes the offender will not have sufficient means to satisfy both orders in full, the court must direct that the compensation be paid out of sums recovered under the confiscation order (section 13 of the Proceeds of Crime Act 2002).

The court may also consider whether to make ancillary orders. These may include a deprivation order, a financial reporting order, a serious crime prevention order and disqualification from acting as a company director.

STEP SEVEN**Reasons**

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

STEP EIGHT**Consideration for time spent on bail**

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

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Possessing, making or supplying articles for use in fraud

Possession of articles for use in frauds

Fraud Act 2006 (section 6)

Triable either way

Maximum: 5 years' custody

Offence range: Band A fine – 3 years' custody

Making or supplying articles for use in frauds

Fraud Act 2006 (section 7)

Triable either way

Maximum: 10 years' custody

Offence range: Band C fine – 7 years' custody

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STEP ONE**Determining the offence category**

The court should determine the offence category with reference to the tables below. In order to determine the category the court should assess **culpability** and **harm**.

The level of **culpability** is determined by weighing up all the factors of the case to determine the offender's role and the extent to which the offending was planned and the sophistication with which it was carried out.

Culpability demonstrated by one or more of the following:**A – High culpability**

- A leading role where offending is part of a group activity
- Involvement of others through pressure, influence
- Abuse of position of power or trust or responsibility
- Sophisticated nature of offence/significant planning
- Fraudulent activity conducted over sustained period of time
- Articles deliberately designed to target victims on basis of vulnerability

B – Medium culpability

- Other cases where characteristics for categories A or C are not present
- A significant role where offending is part of a group activity

C – Lesser culpability

- Performed limited function under direction
- Involved through coercion, intimidation or exploitation
- Not motivated by personal gain
- Opportunistic 'one-off' offence; very little or no planning
- Limited awareness or understanding of extent of fraudulent activity

Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

Harm

This guideline refers to preparatory offences where no substantive fraud has been committed. The level of **harm** is determined by weighing up all the factors of the case to determine the harm that would be caused if the article(s) were used to commit a substantive offence.

Greater harm

- Large number of articles created/supplied/in possession
- Article(s) have potential to facilitate fraudulent acts affecting large number of victims
- Article(s) have potential to facilitate fraudulent acts involving significant sums
- Use of third party identities
- Offender making considerable gain as result of the offence

Lesser harm

- All other offences

STEP TWO
Starting point and category range

Having determined the category at step one, the court should use the appropriate starting point to reach a sentence within the category range in the table below. The starting point applies to all offenders irrespective of plea or previous convictions.

Section 6 Fraud Act 2006: Possessing articles for use in fraud

Maximum: 5 years' custody

| Harm | Culpability | | |
|---------|---|---|--|
| | A | B | C |
| Greater | Starting point 18 months' custody | Starting point 36 weeks' custody | Starting point High level community order |
| | Category range 36 weeks' custody – 3 years' custody | Category range High level community order – 2 years' custody | Category range Medium level community order – 26 weeks' custody |
| Lesser | Starting point 26 weeks' custody | Starting point Medium level community order | Starting point Band B fine |
| | Category range High level community order – 18 months' custody | Category range Low level community order – 26 weeks' custody | Category range Band A fine – Medium level community order |

Section 7 Fraud Act 2006: Making or adapting or supplying articles for use in fraud

Maximum: 10 years' custody

| Harm | Culpability | | |
|---------|--|--|---|
| | A | B | C |
| Greater | Starting point 4 years 6 months' custody | Starting point 2 years 6 months' custody | Starting point 1 year's custody |
| | Category range 3 – 7 years' custody | Category range 18 months' – 5 years' custody | Category range High level community order – 3 years' custody |
| Lesser | Starting point 2 years' custody | Starting point 36 weeks' custody | Starting point Medium level community order |
| | Category range 26 weeks' – 4 years' custody | Category range Low level community order – 2 years' custody | Category range Band C fine – 26 weeks' custody |

The table below contains a non-exhaustive list of additional factual elements providing the context of the offence and factors relating to the offender.

Identify whether any combination of these or other relevant factors should result in an upward or downward adjustment from the starting point

Consecutive sentences for multiple offences may be appropriate where large sums are involved.

Factors increasing seriousness

Statutory aggravating factors:

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

Offence committed whilst on bail

Other aggravating factors:

Steps taken to prevent the victim reporting or obtaining assistance and/or from assisting or supporting the prosecution

Attempts to conceal/dispose of evidence

Established evidence of community/wider impact

Failure to comply with current court orders

Offence committed on licence

Offences taken into consideration

Failure to respond to warnings about behaviour

Offences committed across borders

Blame wrongly placed on others

Factors reducing seriousness or reflecting personal mitigation

No previous convictions **or** no relevant/recent convictions

Remorse

Good character and/or exemplary conduct

Little or no prospect of success

Serious medical conditions requiring urgent, intensive or long-term treatment

Age and/or lack of maturity where it affects the responsibility of the offender

Lapse of time since apprehension where this does not arise from the conduct of the offender

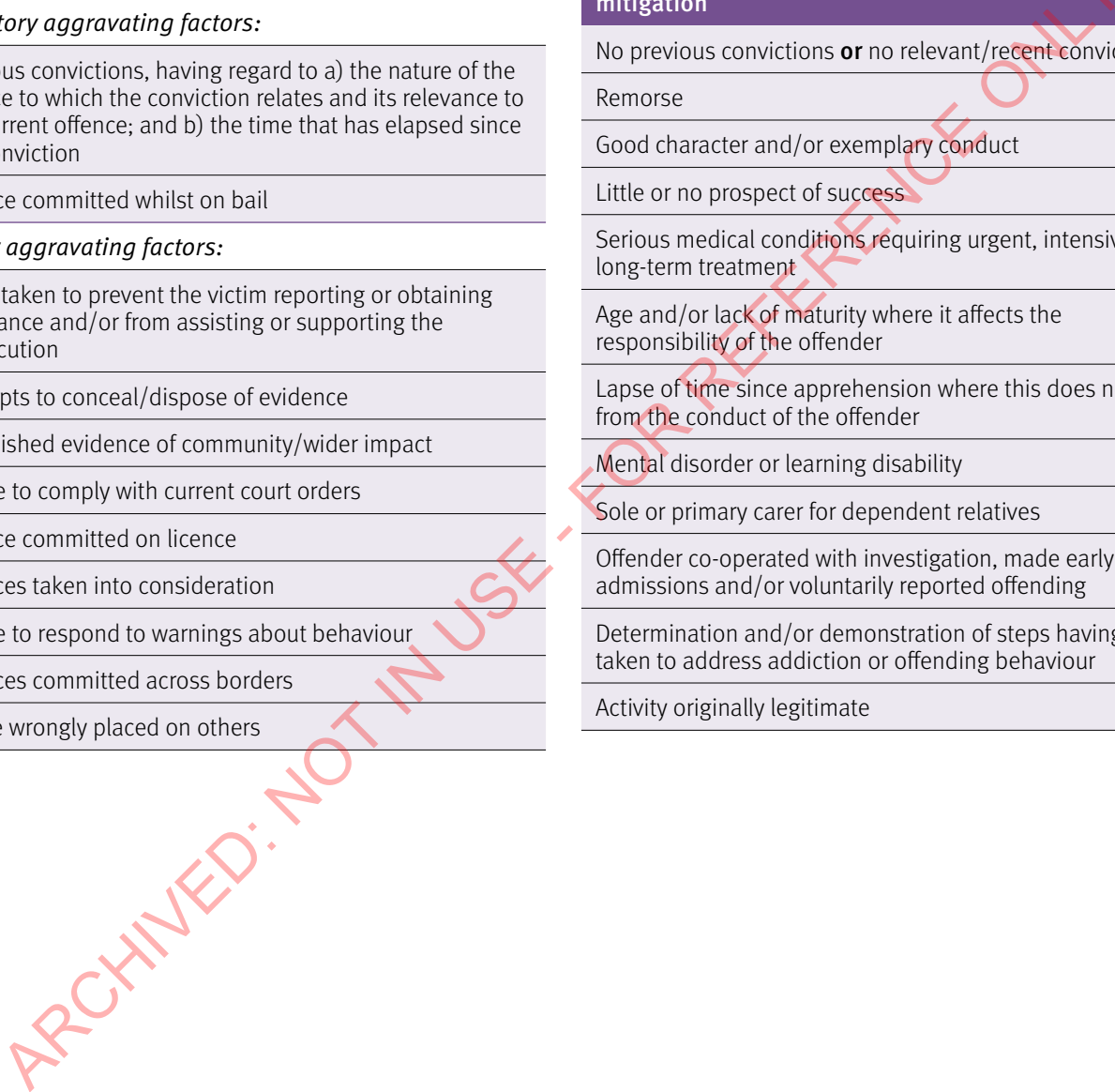
Mental disorder or learning disability

Sole or primary carer for dependent relatives

Offender co-operated with investigation, made early admissions and/or voluntarily reported offending

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

Activity originally legitimate



See page 17.

STEP THREE**Consider any factors which indicate a reduction, such as assistance to the prosecution**

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

STEP FOUR**Reduction for guilty pleas**

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

STEP FIVE**Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour.

STEP SIX**Confiscation, compensation and ancillary orders**

The court must proceed with a view to making a confiscation order if it is asked to do so by the prosecutor or if the court believes it is appropriate for it to do so.

Where the offence has resulted in loss or damage the court must consider whether to make a compensation order.

If the court makes both a confiscation order and an order for compensation and the court believes the offender will not have sufficient means to satisfy both orders in full, the court must direct that the compensation be paid out of sums recovered under the confiscation order (section 13 of the Proceeds of Crime Act 2002).

The court may also consider whether to make any ancillary orders.

STEP SEVEN**Reasons**

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

STEP EIGHT**Consideration for time spent on bail**

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

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Revenue fraud

Fraud

Conspiracy to defraud (common law)

Triable on indictment only

Fraud Act 2006 (section 1)

Triable either way

Maximum: 10 years' custody

Offence range: Low level community order – 8 years' custody

False accounting

Theft Act 1968 (section 17)

Fraudulent evasion of VAT; False statement for VAT purposes; Conduct amounting to an offence

Value Added Tax Act 1994 (section 72)

Fraudulent evasion of income tax

Taxes Management Act 1970 (section 106A)

Fraudulent evasion of excise duty; Improper importation of goods

Customs and Excise Management Act 1979 (sections 50, 170 and 170B)

Triable either way

Maximum: 7 years' custody

Offence range: Band C fine – 6 years and 6 months' custody

Fraud

Cheat the public revenue (common law)

Triable on indictment only

Maximum: Life imprisonment

Offence range: 3 – 17 years' custody

STEP ONE
Determining the offence category

The court should determine the offence category with reference to the tables below. In order to determine the category the court should assess **culpability** and **harm**.

The level of **culpability** is determined by weighing up all the factors of the case to determine the offender’s role and the extent to which the offending was planned and the sophistication with which it was carried out.

Culpability demonstrated by one or more of the following:

- A – High culpability**
 - A leading role where offending is part of a group activity
 - Involvement of others through pressure/influence
 - Abuse of position of power or trust or responsibility
 - Sophisticated nature of offence/significant planning
 - Fraudulent activity conducted over sustained period of time
- B – Medium culpability**
 - Other cases where characteristics for categories A or C are not present
 - A significant role where offending is part of a group activity
- C – Lesser culpability**
 - Involved through coercion, intimidation or exploitation
 - Not motivated by personal gain
 - Opportunistic ‘one-off’ offence; very little or no planning
 - Performed limited function under direction
 - Limited awareness or understanding of extent of fraudulent activity

Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender’s culpability.

Harm – Gain/intended gain to offender or loss/intended loss to HMRC

- Category 1**
 £50 million or more
 Starting point based on £80 million

- Category 2**
 £10 million–£50 million
 Starting point based on £30 million

- Category 3**
 £2 million–£10 million
 Starting point based on £5 million

- Category 4**
 £500,000–£2 million
 Starting point based on £1 million

- Category 5**
 £100,000–£500,000
 Starting point based on £300,000

- Category 6**
 £20,000–£100,000
 Starting point based on £50,000

- Category 7**
 Less than £20,000
 Starting point based on £12,500

STEP TWO
Starting point and category range

Having determined the category at step one, the court should use the appropriate starting point to reach a sentence within the category range in the table below. The starting point applies to all offenders irrespective of plea or previous convictions.

Where the value is larger or smaller than the amount on which the starting point is based, this should lead to upward or downward adjustment as appropriate.

Where the value greatly exceeds the amount of the starting point in category 1, it may be appropriate to move outside the identified range.

TABLE 1
**Section 1 Fraud Act 2006
Conspiracy to defraud (common law)**

Maximum: 10 years' custody

For offences where the value of the fraud is over £2 million refer to the corresponding category in Table 3 subject to the maximum sentence of 10 years for this offence.

| Harm | Culpability | | |
|--|--|--|---|
| | A | B | C |
| Category 4 £500,000–£2 million | Starting point 7 years' custody | Starting point 5 years' custody | Starting point 3 years' custody |
| Starting point based on £1 million | Category range 5 – 8 years' custody | Category range 3 – 6 years' custody | Category range 18 months' – 4 years' custody |
| Category 5 £100,000–£500,000 | Starting point 5 years' custody | Starting point 3 years' custody | Starting point 18 months' custody |
| Starting point based on £300,000 | Category range 3 – 6 years' custody | Category range 18 months' – 4 years' custody | Category range 26 weeks' – 3 years' custody |
| Category 6 £20,000–£100,000 | Starting point 3 years' custody | Starting point 18 months' custody | Starting point 26 weeks' custody |
| Starting point based on £50,000 | Category range 18 months' – 4 years' custody | Category range 26 weeks' – 3 years' custody | Category range Medium level community order – 1 year's custody |
| Category 7 Less than £20,000 | Starting point 18 months' custody | Starting point 36 weeks' custody | Starting point Medium level community order |
| Starting point based on £12,500 | Category range 36 weeks' – 3 years' custody | Category range Medium level community order – 18 months' custody | Category range Low level community order – High level community order |

TABLE 2

Section 17 Theft Act 1968: False Accounting

Section 72(1) Value Added Tax Act 1994: Fraudulent evasion of VAT

Section 72(3) Value Added Tax Act 1994: False statement for VAT purposes

Section 72(8) Value Added Tax Act 1994: Conduct amounting to an offence

Section 106(a) Taxes Management Act 1970: Fraudulent evasion of income tax

Section 170(1)(a)(i), (ii), (b), 170(2)(a), 170B Customs and Excise Management Act 1979: Fraudulent evasion of excise duty

Section 50(1)(a), (2) Customs and Excise Management Act 1979: Improper importation of goods

Maximum: 7 years' custody

| Harm | Culpability | | |
|--|--|--|---|
| | A | B | C |
| Category 4 £500,000–£2 million | Starting point 5 years 6 months' custody | Starting point 4 years' custody | Starting point 2 years 6 months' custody |
| Starting point based on £1 million | Category range 4 years' – 6 years 6 months' custody | Category range 2 years 6 months' – 5 years' custody | Category range 15 months' – 3 years 6 months' custody |
| Category 5 £100,000–£500,000 | Starting point 4 years' custody | Starting point 2 years 6 months' custody | Starting point 15 months' custody |
| Starting point based on £300,000 | Category range 2 years 6 months' – 5 years' custody | Category range 15 months' – 3 years 6 months' custody | Category range 26 weeks' – 2 years 6 months' custody |
| Category 6 £20,000–£100,000 | Starting point 2 years 6 months' custody | Starting point 15 months' custody | Starting point High level community order |
| Starting point based on £50,000 | Category range 15 months' – 3 years 6 months' custody | Category range High level community order – 2 years 6 months' custody | Category range Low level community order – 36 weeks' custody |
| Category 7 Less than £20,000 | Starting point 15 months' custody | Starting point 26 weeks' custody | Starting point Medium level community order |
| Starting point based on £12,500 | Category range 26 weeks' – 2 years 6 months' custody | Category range Medium level community order – 15 months' custody | Category range Band C fine – High level community order |

See page 23.

TABLE 3
Cheat the Revenue (common law)
 Maximum: Life imprisonment

Where the offending is on the most serious scale, involving sums significantly higher than the starting point in category 1, sentences of 15 years and above may be appropriate depending on the role of the offender. In cases involving sums below £2 million the court should refer to Table 1.

| Harm | Culpability | | |
|--|---|--|---|
| | A | B | C |
| Category 1 £50 million or more | Starting point 12 years' custody | Starting point 8 years' custody | Starting point 6 years' custody |
| Starting point based on £80 million | Category range 10 – 17 years' custody | Category range 7 – 12 years' custody | Category range 4 – 8 years' custody |
| Category 2 £10 million–£50 million | Starting point 10 years' custody | Starting point 7 years' custody | Starting point 5 years' custody |
| Starting point based on £30 million | Category range 8 – 13 years' custody | Category range 5 – 9 years' custody | Category range 3 – 6 years' custody |
| Category 3 £2 million–£10 million | Starting point 8 years' custody | Starting point 6 years' custody | Starting point 4 years' custody |
| Starting point based on £5 million | Category range 6 – 10 years' custody | Category range 4 – 7 years' custody | Category range 3 – 5 years' custody |

See page 24.

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The table below contains a non-exhaustive list of additional factual elements providing the context of the offence and factors relating to the offender.

Identify whether any combination of these or other relevant factors should result in any further upward or downward adjustment from the starting point.

Consecutive sentences for multiple offences may be appropriate where large sums are involved.

Factors increasing seriousness

Statutory aggravating factors:

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

Other aggravating factors:

| |
|---|
| Involves multiple frauds |
| Number of false declarations |
| Attempts to conceal/dispose of evidence |
| Failure to comply with current court orders |
| Offence committed on licence |
| Offences taken into consideration |
| Failure to respond to warnings about behaviour |
| Blame wrongly placed on others |
| Damage to third party (for example as a result of identity theft) |
| Dealing with goods with an additional health risk |
| Disposing of goods to under age purchasers |

Factors reducing seriousness or reflecting personal mitigation

| |
|---|
| No previous convictions or no relevant/recent convictions |
| Remorse |
| Good character and/or exemplary conduct |
| Little or no prospect of success |
| Serious medical condition requiring urgent, intensive or long term treatment |
| Age and/or lack of maturity where it affects the responsibility of the offender |
| Lapse of time since apprehension where this does not arise from the conduct of the offender |
| Mental disorder or learning disability |
| Sole or primary carer for dependent relatives |
| Offender co-operated with investigation, made early admissions and/or voluntarily reported offending |
| Determination and/or demonstration of steps having been taken to address addiction or offending behaviour |
| Activity originally legitimate |

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See page 25.

STEP THREE**Consider any factors which indicate a reduction, such as assistance to the prosecution**

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

STEP FOUR**Reduction for guilty pleas**

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

STEP FIVE**Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour.

STEP SIX**Confiscation, compensation and ancillary orders**

The court must proceed with a view to making a confiscation order if it is asked to do so by the prosecutor or if the court believes it is appropriate for it to do so.

Where the offence has resulted in loss or damage the court must consider whether to make a compensation order.

If the court makes both a confiscation order and an order for compensation and the court believes the offender will not have sufficient means to satisfy both orders in full, the court must direct that the compensation be paid out of sums recovered under the confiscation order (section 13 of the Proceeds of Crime Act 2002).

The court may also consider whether to make ancillary orders. These may include a deprivation order, a financial reporting order, a serious crime prevention order and disqualification from acting as a company director.

STEP SEVEN**Reasons**

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

STEP EIGHT**Consideration for time spent on bail**

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

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Benefit fraud

Dishonest representations for obtaining benefit etc

Social Security Administration Act 1992 (section 111A)

Tax Credit fraud

Tax Credits Act 2002 (section 35)

False accounting

Theft Act 1968 (section 17)

Triable either way

Maximum: 7 years' custody

Offence range: Discharge – 6 years 6 months' custody

False representations for obtaining benefit etc

Social Security Administration Act 1992 (section 112)

Triable summarily only

Maximum: Level 5 fine and/or 3 months' custody

Offence range: Discharge – 12 weeks' custody

Fraud by false representation, fraud by failing to disclose information, fraud by abuse of position

Fraud Act 2006 (section 1)

Triable either way

Conspiracy to defraud

Common law

Triable on indictment only

Maximum: 10 years' custody

Offence range: Discharge – 8 years' custody

STEP ONE**Determining the offence category**

The court should determine the offence category with reference to the tables below. In order to determine the category the court should assess **culpability** and **harm**.

The level of **culpability** is determined by weighing up all the factors of the case to determine the offender's role and the extent to which the offending was planned and the sophistication with which it was carried out.

Culpability demonstrated by one or more of the following:

A – High culpability

A leading role where offending is part of a group activity

Involvement of others through pressure/influence

Abuse of position of power or trust or responsibility

Sophisticated nature of offence/significant planning

B – Medium culpability

Other cases where characteristics for categories A or C are not present

Claim not fraudulent from the outset

A significant role where offending is part of a group activity

C – Lesser culpability

Involved through coercion, intimidation or exploitation

Performed limited function under direction

Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

Harm – Amount obtained or intended to be obtained**Category 1**

£500,000–£2 million

Starting point based on £1 million

Category 2

£100,000–£500,000

Starting point based on £300,000

Category 3

£50,000–£100,000

Starting point based on £75,000

Category 4

£10,000–£50,000

Starting point based on £30,000

Category 5

£2,500–£10,000

Starting point based on £5,000

Category 6

Less than £2,500

Starting point based on £1,000

STEP TWO
Starting point and category range

Having determined the category at step one, the court should use the appropriate starting point to reach a sentence within the category range in the table below. The starting point applies to all offenders irrespective of plea or previous convictions.

Where the value is larger or smaller than the amount on which the starting point is based, this should lead to upward or downward adjustment as appropriate.

Where the value greatly exceeds the amount of the starting point in category 1, it may be appropriate to move outside the identified range.

TABLE 1
Section 111A Social Security Administration Act 1992: Dishonest representations to obtain benefit etc
Section 35 Tax Credits Act 2002: Tax Credit fraud
Section 17 Theft Act 1968: False accounting
Maximum: 7 years' custody

| Harm | Culpability | | |
|--|---|---|--|
| | A | B | C |
| Category 1 £500,000 or more | Starting point 5 years 6 months' custody | Starting point 4 years' custody | Starting point 2 years 6 months' custody |
| Starting point based on £1 million | Category range 4 years' – 6 years 6 months' custody | Category range 2 years 6 months' – 5 years' custody | Category range 15 months' – 3 years 6 months' custody |
| Category 2 £100,000–£500,000 | Starting point 4 years' custody | Starting point 2 years 6 months' custody | Starting point 1 year's custody |
| Starting point based on £300,000 | Category range 2 years 6 months' – 5 years' custody | Category range 15 months' – 3 years 6 months' custody | Category range 26 weeks' – 2 years 6 months' custody |
| Category 3 £50,000–£100,000 | Starting point 2 years 6 months' custody | Starting point 1 year's custody | Starting point 26 weeks' custody |
| Starting point based on £75,000 | Category range 2 years' – 3 years 6 months' custody | Category range 26 weeks' – 2 years 6 months' custody | Category range High level community order – 36 weeks' custody |
| Category 4 £10,000–£50,000 | Starting point 18 months' custody | Starting point 36 weeks' custody | Starting point Medium level community order |
| Starting point based on £30,000 | Category range 36 weeks' – 2 years 6 months' custody | Category range Medium level community order – 21 months' custody | Category range Low level community order – 26 weeks' custody |
| Category 5 £2,500–£10,000 | Starting point 36 weeks' custody | Starting point Medium level community order | Starting point Low level community order |
| Starting point based on £5,000 | Category range Medium level community order – 18 months' custody | Category range Low level community order – 26 weeks' custody | Category range Band B fine – Medium level community order |
| Category 6 Less than £2,500 | Starting point Medium level community order | Starting point Low level community order | Starting point Band A fine |
| Starting point based on £1,000 | Category range Low level community order – 26 weeks' custody | Category range Band A fine – Medium level community order | Category range Discharge – Band B fine |

TABLE 2

Section 112 Social Security Administration Act 1992: False representations for obtaining benefit etc
 Maximum: Level 5 fine and/or 3 months' custody

| Harm | Culpability | | |
|---------------------------------------|---|---|---|
| | A | B | C |
| Category 5 Above £2,500 | Starting point High level community order | Starting point Medium level community order | Starting point Low level community order |
| Starting point based on £5,000 | Category range Medium level community order – 12 weeks' custody | Category range Band B fine – High level community order | Category range Band A fine – Medium level community order |
| Category 6 Less than £2,500 | Starting point Medium level community order | Starting point Band B fine | Starting point Band A fine |
| Starting point based on £1,000 | Category range Low level community order – High level community order | Category range Band A fine – Band C fine | Category range Discharge – Band B fine |

See page 31.

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TABLE 3
Section 1 Fraud Act 2006
Conspiracy to defraud (common law)
 Maximum: 10 years' custody

| Harm | Culpability | | |
|---|--|--|--|
| | A | B | C |
| Category 1 £500,000 or more Starting point based on £1 million | Starting point 7 years' custody | Starting point 5 years' custody | Starting point 3 years' custody |
| | Category range 5 – 8 years' custody | Category range 3 – 6 years' custody | Category range 18 months' – 4 years' custody |
| Category 2 £100,000–£500,000 Starting point based on £300,000 | Starting point 5 years' custody | Starting point 3 years' custody | Starting point 15 months' custody |
| | Category range 3 – 6 years' custody | Category range 18 months' – 4 years' custody | Category range 26 weeks' – 3 years' custody |
| Category 3 £50,000–£100,000 Starting point based on £75,000 | Starting point 3 years' custody | Starting point 15 months' custody | Starting point 36 weeks' custody |
| | Category range 2 years 6 months' – 4 years' custody | Category range 36 weeks' – 3 years' custody | Category range 26 weeks' – 1 year's custody |
| Category 4 £10,000–£50,000 Starting point based on £30,000 | Starting point 21 months' custody | Starting point 1 year's custody | Starting point High level community order |
| | Category range 1 year's – 3 years' custody | Category range High level community order – 2 years' custody | Category range Low level community order – 26 weeks' custody |
| Category 5 £2,500–£10,000 Starting point based on £5,000 | Starting point 1 year's custody | Starting point High level community order | Starting point Medium level community order |
| | Category range High level community order – 2 years' custody | Category range Low level community order – 26 weeks' custody | Category range Band C fine – High level community order |
| Category 6 Less than £2,500 Starting point based on £1,000 | Starting point High level community order | Starting point Low level community order | Starting point Band B fine |
| | Category range Low level community order – 26 weeks' custody | Category range Band B fine – Medium level community order | Category range Discharge – Band C fine |

The table below contains a non-exhaustive list of additional factual elements providing the context of the offence and factors relating to the offender.

Identify whether any combination of these or other relevant factors should result in any further upward or downward adjustment from the starting point.

Consecutive sentences for multiple offences may be appropriate where large sums are involved.

Factors increasing seriousness

Statutory aggravating factors:

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

Offence committed whilst on bail

Other aggravating factors:

Claim fraudulent from the outset

Proceeds of fraud funded lavish lifestyle

Length of time over which the offending was committed

Number of false declarations

Attempts to conceal/dispose of evidence

Failure to comply with current court orders

Offence committed on licence

Offences taken into consideration

Failure to respond to warnings about behaviour

Blame wrongly placed on others

Damage to third party (for example as a result of identity theft)

Factors reducing seriousness or reflecting personal mitigation

No previous convictions **or** no relevant/recent convictions

Remorse

Good character and/or exemplary conduct

Serious medical condition requiring urgent, intensive or long term treatment

Legitimate entitlement to benefits not claimed

Little or no prospect of success

Age and/or lack of maturity where it affects the responsibility of the offender

Lapse of time since apprehension where this does not arise from the conduct of the offender

Mental disorder or learning disability

Sole or primary carer for dependent relatives

Offender co-operated with investigation, made early admissions and/or voluntarily reported offending

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

Offender experiencing significant financial hardship or pressure at time fraud was committed due to **exceptional** circumstances

See page 33.

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STEP THREE

Consider any factors which indicate a reduction, such as assistance to the prosecution

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

STEP FOUR

Reduction for guilty pleas

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

STEP FIVE

Totality principle

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour.

STEP SIX

Confiscation, compensation and ancillary orders

The court must proceed with a view to making a confiscation order if it is asked to do so by the prosecutor or if the court believes it is appropriate for it to do so.

Where the offence has resulted in loss or damage the court must consider whether to make a compensation order.

If the court makes both a confiscation order and an order for compensation and the court believes the offender will not have sufficient means to satisfy both orders in full, the court must direct that the compensation be paid out of sums recovered under the confiscation order (section 13 of the Proceeds of Crime Act 2002).

The court may also consider whether to make any ancillary orders.

STEP SEVEN

Reasons

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

STEP EIGHT

Consideration for time spent on bail

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

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Money laundering

Concealing/disguising/convertng/transferring/removing criminal property from England & Wales

Proceeds of Crime Act 2002 (section 327)

Entering into arrangements concerning criminal property

Proceeds of Crime Act 2002 (section 328)

Acquisition, use and possession of criminal property

Proceeds of Crime Act 2002 (section 329)

Triable either way

Maximum: 14 years' custody

Offence range: Band B fine – 13 years' imprisonment

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STEP ONE
Determining the offence category

The court should determine the offence category with reference to the tables below. In order to determine the category the court should assess **culpability** and **harm**.

The level of **culpability** is determined by weighing up all the factors of the case to determine the offender’s role and the extent to which the offending was planned and the sophistication with which it was carried out.

Culpability demonstrated by one or more of the following:

A – High culpability

- A leading role where offending is part of a group activity
- Involvement of others through pressure, influence
- Abuse of position of power or trust or responsibility
- Sophisticated nature of offence/significant planning
- Criminal activity conducted over sustained period of time

B – Medium culpability

- Other cases where characteristics for categories A or C are not present
- A significant role where offending is part of a group activity

C – Lesser culpability

- Performed limited function under direction
- Involved through coercion, intimidation or exploitation
- Not motivated by personal gain
- Opportunistic ‘one-off’ offence; very little or no planning
- Limited awareness or understanding of extent of criminal activity

Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender’s culpability.

Harm A

Harm is initially assessed by the value of the money laundered.

Category 1

£10 million or more
 Starting point based on £30 million

Category 2

£2 million–£10 million
 Starting point based on £5 million

Category 3

£500,000–£2 million
 Starting point based on £1 million

Category 4

£100,000–£500,000
 Starting point based on £300,000

Category 5

£10,000–£100,000
 Starting point based on £50,000

Category 6

Less than £10,000
 Starting point based on £5,000

Harm B

Money laundering is an integral component of much serious criminality. **To complete the assessment of harm, the court should take into account the level of harm associated with the underlying offence to determine whether it warrants upward adjustment of the starting point within the range, or in appropriate cases, outside the range.**

Where it is possible to identify the underlying offence, regard should be given to the relevant sentencing levels for that offence.

STEP TWO

Starting point and category range

Having determined the category at step one, the court should use the appropriate starting point (as adjusted in accordance with step one above) to reach a sentence within the category range in the table below. The starting point applies to all offenders irrespective of plea or previous convictions.

Where the value is larger or smaller than the amount on which the starting point is based, this should lead to upward or downward adjustment as appropriate.

Where the value greatly exceeds the amount of the starting point in category 1, it may be appropriate to move outside the identified range.

Section 327 Proceeds of Crime Act 2002: Concealing/disguising/converting/transferring/removing criminal property from England & Wales

Section 328 Proceeds of Crime Act 2002: Entering into arrangements concerning criminal property

Section 329 Proceeds of Crime Act 2002: Acquisition, use and possession of criminal property

Maximum: 14 years' custody

| Harm | Culpability | | |
|---|--|---|--|
| | A | B | C |
| Category 1 £10 million or more | Starting point 10 years' custody | Starting point 7 years' custody | Starting point 4 years' custody |
| Starting point based on £30 million | Category range 8 – 13 years' custody | Category range 5 – 10 years' custody | Category range 3 – 6 years' custody |
| Category 2 £2 million–£10 million | Starting point 8 years' custody | Starting point 6 years' custody | Starting point 3 years 6 months' custody |
| Starting point based on £5 million | Category range 6 – 9 years' custody | Category range 3 years 6 months' – 7 years' custody | Category range 2 – 5 years' custody |
| Category 3 £500,000–£2 million | Starting point 7 years' custody | Starting point 5 years' custody | Starting point 3 years' custody |
| Starting point based on £1 million | Category range 5 – 8 years' custody | Category range 3 – 6 years' custody | Category range 18 months' – 4 years' custody |
| Category 4 £100,000–£500,000 | Starting point 5 years' custody | Starting point 3 years' custody | Starting point 18 months' custody |
| Starting point based on £300,000 | Category range 3 – 6 years' custody | Category range 18 months' – 4 years' custody | Category range 26 weeks' – 3 years' custody |
| Category 5 £10,000–£100,000 | Starting point 3 years' custody | Starting point 18 months' custody | Starting point 26 weeks' custody |
| Starting point based on £50,000 | Category range 18 months' – 4 years' custody | Category range 26 weeks' – 3 years' custody | Category range Medium level community order – 1 year's custody |
| Category 6 Less than £10,000 | Starting point 1 year's custody | Starting point High level community order | Starting point Low level community order |
| Starting point based on £5,000 | Category range 26 weeks' – 2 years' custody | Category range Low level community order – 1 year's custody | Category range Band B fine – Medium level community order |

The table below contains a non-exhaustive list of additional factual elements providing the context of the offence and factors relating to the offender.

Identify whether any combination of these or other relevant factors should result in an upward or downward adjustment of the sentence arrived at thus far.

Consecutive sentences for multiple offences may be appropriate where large sums are involved.

Factors increasing seriousness

Statutory aggravating factors:

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

Offence committed whilst on bail

Other aggravating factors:

Attempts to conceal/dispose of evidence

Established evidence of community/wider impact

Failure to comply with current court orders

Offence committed on licence

Offences taken into consideration

Failure to respond to warnings about behaviour

Offences committed across borders

Blame wrongly placed on others

Damage to third party for example loss of employment to legitimate employees

Factors reducing seriousness or reflecting personal mitigation

No previous convictions **or** no relevant/recent convictions

Remorse

Little or no prospect of success

Good character and/or exemplary conduct

Serious medical conditions requiring urgent, intensive or long-term treatment

Age and/or lack of maturity where it affects the responsibility of the offender

Lapse of time since apprehension where this does not arise from the conduct of the offender

Mental disorder or learning disability

Sole or primary carer for dependent relatives

Offender co-operated with investigation, made early admissions and/or voluntarily reported offending

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

Activity originally legitimate

See page 39.

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STEP THREE**Consider any factors which indicate a reduction, such as assistance to the prosecution**

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

STEP FOUR**Reduction for guilty pleas**

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

STEP FIVE**Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour.

STEP SIX**Confiscation, compensation and ancillary orders**

The court must proceed with a view to making a confiscation order if it is asked to do so by the prosecutor or if the court believes it is appropriate for it to do so.

Where the offence has resulted in loss or damage the court must consider whether to make a compensation order.

If the court makes both a confiscation order and an order for compensation and the court believes the offender will not have sufficient means to satisfy both orders in full, the court must direct that the compensation be paid out of sums recovered under the confiscation order (section 13 of the Proceeds of Crime Act 2002).

The court may also consider whether to make ancillary orders. These may include a deprivation order, a financial reporting order, a serious crime prevention order and disqualification from acting as a company director.

STEP SEVEN**Reasons**

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

STEP EIGHT**Consideration for time spent on bail**

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

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Bribery

Bribing another person

Bribery Act 2010 (section 1)

Being bribed

Bribery Act 2010 (section 2)

Bribery of foreign public officials

Bribery Act 2010 (section 6)

Triable either way

Maximum: 10 years' custody

Offence range: Discharge – 8 years' custody

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STEP ONE**Determining the offence category**

The court should determine the offence category with reference to the tables below. In order to determine the category the court should assess **culpability** and **harm**.

The level of **culpability** is determined by weighing up all the factors of the case to determine the offender's role and the extent to which the offending was planned and the sophistication with which it was carried out.

Harm is assessed in relation to any impact caused by the offending (whether to identifiable victims or in a wider context) and the actual or intended gain to the offender.

Culpability demonstrated by one or more of the following:

A – High culpability

A leading role where offending is part of a group activity

Involvement of others through pressure, influence

Abuse of position of significant power or trust or responsibility

Intended corruption (directly or indirectly) of a senior official performing a public function

Intended corruption (directly or indirectly) of a law enforcement officer

Sophisticated nature of offence/significant planning

Offending conducted over sustained period of time

Motivated by expectation of substantial financial, commercial or political gain

B – Medium culpability

All other cases where characteristics for categories A or C are not present

A significant role where offending is part of a group activity

C – Lesser culpability

Involved through coercion, intimidation or exploitation

Not motivated by personal gain

Peripheral role in organised activity

Opportunistic 'one-off' offence; very little or no planning

Limited awareness or understanding of extent of corrupt activity

Harm demonstrated by one or more of the following factors:

Category 1

- Serious detrimental effect on individuals (for example by provision of substandard goods or services resulting from the corrupt behaviour)
- Serious environmental impact
- Serious undermining of the proper function of local or national government, business or public services
- Substantial actual or intended financial gain to offender or another or loss caused to others

Category 2

- Significant detrimental effect on individuals
- Significant environmental impact
- Significant undermining of the proper function of local or national government, business or public services
- Significant actual or intended financial gain to offender or another or loss caused to others
- Risk of category 1 harm

Category 3

- Limited detrimental impact on individuals, the environment, government, business or public services
- Risk of category 2 harm

Category 4

- Risk of category 3 harm

Risk of harm involves consideration of both the likelihood of harm occurring and the extent of it if it does. Risk of harm is less serious than the same actual harm. Where the offence has caused risk of harm but no (or much less) actual harm, the normal approach is to move to the next category of harm down. This may not be appropriate if either the likelihood or extent of potential harm is particularly high.

Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

STEP TWO
Starting point and category range

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions.

Section 1 Bribery Act 2010: Bribing another person

Section 2 Bribery Act 2010: Being bribed

Section 6 Bribery Act 2010: Bribery of foreign public officials

Maximum: 10 years' custody

| Harm | Culpability | | |
|------------|---|---|---|
| | A | B | C |
| Category 1 | Starting point 7 years' custody | Starting point 5 years' custody | Starting point 3 years' custody |
| | Category range 5 – 8 years' custody | Category range 3 – 6 years' custody | Category range 18 months' – 4 years' custody |
| Category 2 | Starting point 5 years' custody | Starting point 3 years' custody | Starting point 18 months' custody |
| | Category range 3 – 6 years' custody | Category range 18 months' – 4 years' custody | Category range 26 weeks' – 3 years' custody |
| Category 3 | Starting point 3 years' custody | Starting point 18 months' custody | Starting point 26 weeks' custody |
| | Category range 18 months' – 4 years' custody | Category range 26 weeks' – 3 years' custody | Category range Medium level community order – 1 year's custody |
| Category 4 | Starting point 18 months' custody | Starting point 26 weeks' custody | Starting point Medium level community order |
| | Category range 26 weeks' – 3 years' custody | Category range Medium level community order – 1 year's custody | Category range Band B fine – High level community order |

See page 44.

The table below contains a non-exhaustive list of additional factual elements providing the context of the offence and factors relating to the offender.

Identify whether any combination of these or other relevant factors should result in an upward or downward adjustment from the starting point.

Consecutive sentences for multiple offences may be appropriate where large sums are involved.

| Factors increasing seriousness | Factors reducing seriousness or reflecting personal mitigation |
|---|--|
| Statutory aggravating factors: | No previous convictions or no relevant/recent convictions |
| Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction | Remorse |
| Offence committed whilst on bail | Good character and/or exemplary conduct |
| Other aggravating factors: | Little or no prospect of success |
| Steps taken to prevent victims reporting or obtaining assistance and/or from assisting or supporting the prosecution | Serious medical conditions requiring urgent, intensive or long-term treatment |
| Attempts to conceal/dispose of evidence | Age and/or lack of maturity where it affects the responsibility of the offender |
| Established evidence of community/wider impact | Lapse of time since apprehension where this does not arise from the conduct of the offender |
| Failure to comply with current court orders | Mental disorder or learning disability |
| Offence committed on licence | Sole or primary carer for dependent relatives |
| Offences taken into consideration | Offender co-operated with investigation, made early admissions and/or voluntarily reported offending |
| Failure to respond to warnings about behaviour | |
| Offences committed across borders | |
| Blame wrongly placed on others | |
| Pressure exerted on another party | |
| Offence committed to facilitate other criminal activity | |

See page 45.

STEP THREE**Consider any factors which indicate a reduction, such as assistance to the prosecution**

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

STEP FOUR**Reduction for guilty pleas**

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

STEP FIVE**Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour.

STEP SIX**Confiscation, compensation and ancillary orders**

The court must proceed with a view to making a confiscation order if it is asked to do so by the prosecutor or if the court believes it is appropriate for it to do so.

Where the offence has resulted in loss or damage the court must consider whether to make a compensation order.

If the court makes both a confiscation order and an order for compensation and the court believes the offender will not have sufficient means to satisfy both orders in full, the court must direct that the compensation be paid out of sums recovered under the confiscation order (section 13 of the Proceeds of Crime Act 2002).

The court may also consider whether to make ancillary orders. These may include a deprivation order, a financial reporting order, a serious crime prevention order and disqualification from acting as a company director.

STEP SEVEN**Reasons**

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

STEP EIGHT**Consideration for time spent on bail**

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

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Corporate Offenders: Fraud, Bribery and Money Laundering

Fraud

Conspiracy to defraud (common law)
 Cheat the public revenue (common law)

Triable only on indictment

Fraud Act 2006 (sections 1, 6 and 7)
 Theft Act 1968 (section 17)
 Value Added Tax Act 1994 (section 72)
 Customs and Excise Management Act 1979 (section 170)

Triable either way

Bribery

Bribery Act 2010 (sections 1, 2, 6 and 7)

Triable either way

Money laundering

Proceeds of Crime Act 2002 (sections 327, 328 and 329)

Triable either way

Maximum: Unlimited fine

Most cases of corporate offending in this area are likely to merit allocation for trial to the Crown Court.

Committal for sentence is mandatory if confiscation (see step two) is to be considered. (Proceeds of Crime Act 2002 section 70).

STEP ONE Compensation

The court must consider making a compensation order requiring the offender to pay compensation for any personal injury, loss or damage resulting from the offence in such an amount as the court considers appropriate, having regard to the evidence and to the means of the offender.

Where the means of the offender are limited, priority should be given to the payment of compensation over payment of any other financial penalty.

Reasons should be given if a compensation order is not made.

(See section 130 Powers of Criminal Courts (Sentencing) Act 2000)

STEP TWO Confiscation

Confiscation must be considered if either the Crown asks for it or the court thinks that it may be appropriate.

Confiscation must be dealt with before, and taken into account when assessing, any other fine or financial order (except compensation).

(See Proceeds of Crime Act 2002 sections 6 and 13)

See page 49.

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STEP THREE

Determining the offence category

The court should determine the offence category with reference to **culpability** and **harm**.

Culpability

The sentencer should weigh up all the factors of the case to determine **culpability**. **Where there are characteristics present which fall under different categories, the court should balance these characteristics to reach a fair assessment of the offender's culpability.**

Culpability demonstrated by the offending corporation's role and motivation. May be demonstrated by one or more of the following **non-exhaustive** characteristics.

A – High culpability

Corporation plays a leading role in organised, planned unlawful activity (whether acting alone or with others)

Wilful obstruction of detection (for example destruction of evidence, misleading investigators, suborning employees)

Involving others through pressure or coercion (for example employees or suppliers)

Targeting of vulnerable victims or a large number of victims

Corruption of local or national government officials or ministers

Corruption of officials performing a law enforcement role

Abuse of dominant market position or position of trust or responsibility

Offending committed over a sustained period of time

Culture of wilful disregard of commission of offences by employees or agents with no effort to put effective systems in place (section 7 Bribery Act only)

B – Medium culpability

Corporation plays a significant role in unlawful activity organised by others

Activity not unlawful from the outset

Corporation reckless in making false statement (section 72 VAT Act 1994)

All other cases where characteristics for categories A or C are not present

C – Lesser culpability

Corporation plays a minor, peripheral role in unlawful activity organised by others

Some effort made to put bribery prevention measures in place but insufficient to amount to a defence (section 7 Bribery Act only)

Involvement through coercion, intimidation or exploitation

Harm

Harm is represented by a financial sum calculated by reference to the table below

Amount obtained or intended to be obtained (or loss avoided or intended to be avoided)

Fraud For offences of fraud, conspiracy to defraud, cheating the Revenue and fraudulent evasion of duty or VAT, harm will normally be the actual or intended gross gain to the offender.

Bribery For offences under the Bribery Act the appropriate figure will normally be the gross profit from the contract obtained, retained or sought as a result of the offending. An alternative measure for offences under section 7 may be the likely cost avoided by failing to put in place appropriate measures to prevent bribery.

Money laundering For offences of money laundering the appropriate figure will normally be the amount laundered or, alternatively, the likely cost avoided by failing to put in place an effective anti-money laundering programme if this is higher.

General Where the actual or intended gain cannot be established, the appropriate measure will be the amount that the court considers was likely to be achieved in all the circumstances.

In the absence of sufficient evidence of the amount that was likely to be obtained, 10–20 per cent of the relevant revenue (for instance between 10 and 20 per cent of the worldwide revenue derived from the product or business area to which the offence relates for the period of the offending) **may** be an appropriate measure.

There may be large cases of fraud or bribery in which the true harm is to commerce or markets generally. That may justify adopting a harm figure beyond the normal measures here set out.

STEP FOUR
Starting point and category range

Having determined the culpability level at step three, the court should use the table below to determine the starting point within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions.

The harm figure at step three is multiplied by the relevant percentage figure representing culpability.

| | Culpability Level | | |
|-------------------------------|---------------------------------------|---------------------------------------|--------------------------------------|
| | A | B | C |
| Harm figure multiplier | Starting point 300% | Starting point 200% | Starting point 100% |
| | Category range 250% to 400% | Category range 100% to 300% | Category range 20% to 150% |

Having determined the appropriate starting point, the court should then consider adjustment within the category range for aggravating or mitigating features. In some cases, having considered these factors, it may be appropriate to move outside the identified category range. (See below for a **non-exhaustive** list of aggravating and mitigating factors.)

| Factors increasing seriousness |
|--|
| Previous relevant convictions or subject to previous relevant civil or regulatory enforcement action |
| Corporation or subsidiary set up to commit fraudulent activity |
| Fraudulent activity endemic within corporation |
| Attempts made to conceal misconduct |
| Substantial harm (whether financial or otherwise) suffered by victims of offending or by third parties affected by offending |
| Risk of harm greater than actual or intended harm (for example in banking/credit fraud) |
| Substantial harm caused to integrity or confidence of markets |
| Substantial harm caused to integrity of local or national governments |
| Serious nature of underlying criminal activity (money laundering offences) |
| Offence committed across borders or jurisdictions |

| Factors reducing seriousness or reflecting mitigation |
|---|
| No previous relevant convictions or previous relevant civil or regulatory enforcement action |
| Victims voluntarily reimbursed/compensated |
| No actual loss to victims |
| Corporation co-operated with investigation, made early admissions and/or voluntarily reported offending |
| Offending committed under previous director(s)/manager(s) |
| Little or no actual gain to corporation from offending |

General principles to follow in setting a fine

The court should determine the appropriate level of fine in accordance with section 164 of the Criminal Justice Act 2003, which requires that the fine must reflect the seriousness of the offence and requires the court to take into account the financial circumstances of the offender.

Obtaining financial information

Companies and bodies delivering public or charitable services

Where the offender is a company or a body which delivers a public or charitable service, it is expected to provide comprehensive accounts for the last three years, to enable the court to make an accurate assessment of its financial status. In the absence of such disclosure, or where the court is not satisfied that it has been given sufficient reliable information, the court will be entitled to draw reasonable inferences as to the offender's means from evidence it has heard and from all the circumstances of the case.

1. *For companies*: annual accounts. Particular attention should be paid to turnover; profit before tax; directors' remuneration, loan accounts and pension provision; and assets as disclosed by the balance sheet. Most companies are required to file audited accounts at Companies House. Failure to produce relevant recent accounts on request may properly lead to the conclusion that the company can pay any appropriate fine.
2. *For partnerships*: annual accounts. Particular attention should be paid to turnover; profit before tax; partners' drawings, loan accounts and pension provision; assets as above. Limited liability partnerships (LLPs) may be required to file audited accounts with Companies House. If adequate accounts are not produced on request, see paragraph 1.
3. *For local authorities, fire authorities and similar public bodies*: the Annual Revenue Budget ("ARB") is the equivalent of turnover and the best indication of the size of the defendant organisation. It is unlikely to be necessary to analyse specific expenditure or reserves unless inappropriate expenditure is suggested.
4. *For health trusts*: the independent regulator of NHS Foundation Trusts is Monitor. It publishes quarterly reports and annual figures for the financial strength and stability of trusts from which the annual income can be seen, available via www.monitor-nhsft.gov.uk. Detailed analysis of expenditure or reserves is unlikely to be called for.
5. *For charities*: it will be appropriate to inspect annual audited accounts. Detailed analysis of expenditure or reserves is unlikely to be called for unless there is a suggestion of unusual or unnecessary expenditure.

STEP FIVE

Adjustment of fine

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

- the removal of all gain
- appropriate additional punishment, and
- deterrence

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

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

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

The court should consider whether the level of fine would otherwise cause unacceptable harm to third parties. In doing so the court should bear in mind that the payment of any compensation determined at step one should take priority over the payment of any fine.

The table below contains a **non-exhaustive** list of additional factual elements for the court to consider. The Court should identify whether any combination of these, or other relevant factors, should result in a proportionate increase or reduction in the level of fine.

Factors to consider in adjusting the level of fine

| |
|--|
| Fine fulfils the objectives of punishment, deterrence and removal of gain |
| The value, worth or available means of the offender |
| Fine impairs offender's ability to make restitution to victims |
| Impact of fine on offender's ability to implement effective compliance programmes |
| Impact of fine on employment of staff, service users, customers and local economy (but not shareholders) |
| Impact of fine on performance of public or charitable function |

STEP SIX

Consider any factors which would indicate a reduction, such as assistance to the prosecution

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

STEP SEVEN

Reduction for guilty pleas

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

STEP EIGHT

Ancillary Orders

In all cases the court must consider whether to make any ancillary orders.

STEP NINE

Totality principle

If sentencing an offender for more than one offence, consider whether the total sentence is just and proportionate to the offending behaviour.

STEP TEN

Reasons

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

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Annex

Fine bands and community orders

FINE BANDS

In this guideline, fines are expressed as one of three fine bands (A, B or C).

| Fine Band | Starting point (applicable to all offenders) | Category range (applicable to all offenders) |
|---------------|--|--|
| Band A | 50% of relevant weekly income | 25 – 75% of relevant weekly income |
| Band B | 100% of relevant weekly income | 75 – 125% of relevant weekly income |
| Band C | 150% of relevant weekly income | 125 – 175% of relevant weekly income |

COMMUNITY ORDERS

In this guideline, community sentences are expressed as one of three levels (low, medium and high).

An illustrative description of examples of requirements that might be appropriate for each level is provided below. Where two or more requirements are ordered, they must be compatible with each other.

| Low | Medium | High |
|--|--|---|
| 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 one or more of: <ul style="list-style-type: none"> • 40 – 80 hours unpaid work; • prohibited activity requirement; • curfew requirement within the lowest range (for example, up to 12 hours per day for a few weeks) | Suitable requirements might include one or more of: <ul style="list-style-type: none"> • greater number of hours of unpaid work (for example, 80 – 150 hours); • prohibited activity requirement; • an activity requirement in the middle range (20 – 30 days); • curfew requirement within the middle range (for example, up to 12 hours for two to three months) | Suitable requirements might include one or more of: <ul style="list-style-type: none"> • 150 – 300 hours of 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. |

The tables are also set out in the *Magistrates' Court Sentencing Guidelines* which includes further guidance on fines and community orders.

Notes

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