

9 July 2015

Dear Member,

Meeting of the Sentencing Council – 17 July 2015

The next Council meeting will be held in the **Queens Building Conference Suite, 2nd Floor Mezzanine at the Royal Courts of Justice**, on Friday 17 July 2015 at 9:45.

The meeting is being held in the Queen's Building. A security pass is not needed to gain access to this building and members can head straight to the meeting room. Once at the Queen's building go to the lifts and the floor is 2M. Alternatively call the office on 020 7071 5793 and a member of staff will come and escort you to the meeting room.

The following papers are attached for the Council meeting:

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| ▪ Agenda | SC(15)JUL00 |
| ▪ Minutes of meeting held on 19 June | SC(14)JUN01 |
| ▪ Action Log | SC(15)JUL02 |
| ▪ Governance and strategy | SC(15)JUL03 |
| ▪ Costs of sentencing | SC(15)JUL04 |
| ▪ Theft | SC(15)JUL05 |
| ▪ Guilty plea | SC(15)JUL06 |
| ▪ Health and safety | SC(15)JUL07 |
| ▪ Youths | SC(15)JUL08 |

The Law Commission is giving a presentation about its sentencing project. It published its first consultation paper on the sentencing code which is available on its website: <http://www.lawcom.gov.uk/wp-content/uploads/2015/06/Sentencing-Procedure-Issues-Paper-Transition-online.pdf>

Members can access papers via the members' area of the website and for those without access to the area a single pdf is attached which contains all the meeting papers in one document with links to each item.

I look forward to seeing you on the 17th.

Yours sincerely



Claire Fielder

Head of the Office of the Sentencing Council

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Sentencing Council

COUNCIL MEETING AGENDA

17 July 2015
Royal Courts of Justice
Queen's Building Conference Room

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| 09:45 – 10:00 | Minutes of the last meeting and matters arising (papers 1 & 2) |
| 10:00 – 10:30 | Presentation by the Law Commission: Sentencing Procedure |
| 10:30 – 11:00 | Council governance and strategy – presented by Claire Fielder (paper 3) |
| 11:00 – 11:15 | Costs of sentencing – presented by Caroline Nauth-Misir (paper 4) |
| 11:15 – 12:30 | Theft – presented by Mandy Banks (paper 5) |
| 12:30 - 13:15 | Guilty plea – presented by Ruth Pope (paper 6) |
| 13:15 – 13:45 | Lunch |
| 13:45 – 15:00 | Health and Safety – presented by Lisa Frost (paper 7) |
| 15:00 – 16:00 | Youths – presented by Vicky Hunt (paper 8) |
| 16:00 – 16:30 | MCSG – presented by Helen Stear |

Sentencing Council

COUNCIL MEETING AGENDA

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MEETING OF THE SENTENCING COUNCIL

19 JUNE 2015

MINUTES

<u>Members present:</u>	Colman Treacy (Chairman) Michael Caplan Julian Goose Martin Graham Jill Gramann Tim Holroyde Lynne Owens Julian Roberts Alison Saunders John Saunders
<u>Apologies:</u>	Heather Hallett Javed Khan Sarah Munro Richard Williams
<u>Advisers present:</u>	Paul Wiles
<u>Representatives:</u>	Stephen Muers for the Ministry of Justice (Director, Criminal Justice Policy) Ceri Hopewell for the Lord Chief Justice (Legal Advisor to the Lord Chief Justice, Criminal Justice Team)
<u>Members of Office in Attendance</u>	Claire Fielder (Head of Office) Mandy Banks Lisa Frost Vicky Hunt Ruth Pope Victoria Obudulu Joanne Keatley

1. WELCOME AND APOLOGIES FOR ABSENCE

1.1 Apologies were received as set out above.

2. MINUTES OF LAST MEETING

2.1. The minutes from the meeting of 15 May 2015 were agreed.

3. MATTERS ARISING

3.1 The Chairman updated the Council on two recent meetings with Andrew Selous, the Minister responsible for sentencing, and Indra Morris, Director-General Criminal Justice Group at the Ministry of Justice.

3.2 The Chairman thanked Sarah Munro and Jill Gramann for leading two separate consultation events on the Dangerous Dogs guideline

4. DISCUSSION ON THE CROWN COURT SENTENCING SURVEY ANNUAL PUBLICATION – PRESENTED BY VICTORIA OBUDULU, OFFICE OF THE SENTENCING COUNCIL

4.1 The Council considered the key findings from the CCSS annual publication, including those that the Analysis and Research subgroup had recommended highlighting. The report would be published on 25th June.

4.2 The Council agreed how the findings should be communicated on the website and more widely.

5. UPDATE FROM THE CONFIDENCE AND COMMUNICATIONS AND ANALYSIS AND RESEARCH SUBGROUPS – MICHAEL CAPLAN AND JULIAN ROBERTS, SENTENCING COUNCIL MEMBERS

5.1 The Chairmen of the Confidence and Communications and Analysis and Research sub groups updated the Council on the revised terms of reference for these groups as well as some of the specific pieces of work currently underway. They also welcomed new members to the subgroups: for the Confidence and Communications' subgroup Martin Graham, and for Analysis and Research, John Saunders and Tim Holroyde.

6. DISCUSSION ON ROBBERY – PRESENTED BY VICKY HUNT, OFFICE OF THE SENTENCING COUNCIL

6.1 The Council considered the sentencing levels proposed for the three Robbery guidelines and broadly agreed. Some further work will now be

done to ensure the sentencing ranges are appropriate and to check the upper sentencing levels proposed for professionally planned robbery.

6.2 The Council also agreed to make some amendments to the harm factors across all three guidelines, and agreed to the proposed definitions provided for the combined street/less sophisticated commercial robbery guideline and the professionally planned robbery guideline.

6.3 The draft guidelines will be considered again in September.

7. DISCUSSION ON HEALTH AND SAFETY AND FOOD SAFETY AND HYGIENE - PRESENTED BY LISA FROST, OFFICE OF THE SENTENCING COUNCIL

7.1 Paul Wiles notified the Council of a conflict of interest and took no part in the discussion.

7.2 This was the Council's third review of the consultation responses following the end of the consultation on 18 February 2015. The Council gave further consideration to the health and safety offences harm model, and considered the responses to questions relating to the food hygiene offences sections of the guideline.

7.3 The Council agreed revisions to the health and safety harm model following an exercise to test its practical application. Revisions to culpability and harm within the food hygiene guidelines were agreed, taking into account consultation responses. There were also revisions made to mitigating factors, and greater prominence given to the consideration of totality of fines in the light of consultation responses.

8. DISCUSSION ON THEFT – PRESENTED BY MANDY BANKS, OFFICE OF THE SENTENCING COUNCIL

8.1 The Council reviewed the sentence ranges throughout the theft guidelines, and discussed whether any revisions should be made to the ranges, post consultation. A number of key points in relation to the ranges were considered including current sentencing practice, case law and proportionality between theft offences within the guidelines, and with other relevant offences, for example fraud and burglary.

8.2 Final consideration of the ranges would be made at the July meeting, when the Council would sign off the definitive guideline.

9. DISCUSSION ON YOUTHS – PRESENTED BY JOANNE KEATLEY, OFFICE OF THE SENTENCING COUNCIL

9.1 The Council was asked to consider the scope of the Youth guideline and it was agreed that it will consist of the revised Overarching Principles and some offence specific guidance.

- 9.2 The Council was then asked to consider the second draft of the Overarching Principles. It was agreed that the section on determining the sentence should be redrafted for further consideration in September. It was also proposed that some of the wording be revised, particularly in the sections on welfare and allocation.

10. DISCUSSION ON BREACH – PRESENTED BY LISA FROST, OFFICE OF THE SENTENCING COUNCIL

- 10.1 The Council considered the timing and scope of the breach sentence guidelines. Due to a number of issues which have emerged during the development of the guideline, the Council agreed to postpone the launch of the consultation for at least six months. This will allow more time to conduct a robust impact assessment for the guideline, and explore other related matters.

11. DISCUSSION ON SUPPORTING MATERIALS FOR GUIDELINES – PRESENTED BY RUTH POPE, OFFICE OF THE SENTENCING COUNCIL

- 11.1 The Council considered the supporting materials currently available on its website. It was agreed that these materials should be reviewed on a regular basis to ensure that they are current and relevant and that additional material including links to useful cases on the interpretation of guidelines should be added.

ACTION AND ACTIVITY LOG – as at 9 July 2015

	Topic	What	Who	Actions to date	Outcome
SENTENCING COUNCIL MEETING 30 JANUARY 2015					
1	Probation	John Crawforth proposed a presentation on changes to Probation for a future Council meeting	Claire Fielder	ACTION ONGOING – Claire is approaching Colin Allars, Director of Probation in NOMS, to speak to the Council at a future meeting.	Arranging for the autumn
2	PQBD's review of efficiency in criminal proceedings	Paper/s to March Council exploring options for implementing the review's recommendations where relevant to the Council.	Claire Fielder / Ruth Pope	ACTION ONGOING Longer term "out of scope" recommendations relating to structure of the criminal courts will be considered at a later date.	PARTIALLY CLOSED The Council agreed to revise the allocation guideline and the recommendations relating to the guilty plea guideline will be picked up in the consultation.
SENTENCING COUNCIL MEETING 6 MARCH 2015					
3	Assault	Council decided that the work to be taken forward should be a potential combination of a complete review, option 3, and a review plus guidance on child cruelty and/or domestic violence, option 4, depending on the resource involved and whether Government legislates on DV early in next Parliament.	Mandy Banks	ACTION ONGOING: MOJ have since confirmed that the recent legislation on child cruelty was not a new offence, but a clarification of existing offences.	ACTION ONGOING - Review in November.
SENTENCING COUNCIL MEETING 17 APRIL 2015					
4	Costs of sentencing	Council decided that a note should be produced, to be published on the A&R section of the Council's website, providing hyperlinks to relevant MoJ figures currently published on the costs of sentencing. A draft of the note should be taken to the A&R sub-group and then back to Council before publication.	Caroline Nauth-Misir	ACTION ONGOING: A draft of the note was presented at the A&R sub-group meeting on 10 June.	ACTION ONGOING: A revised draft of the note to be presented to the Council at July meeting.

SENTENCING COUNCIL MEETING 15 May 2015

5	Guilty Pleas	Consultation to be delayed. Officials are speaking to the CPS, MoJ and police regarding impact on other parts of the system. The costs model is to be run again using 2014 CCSS data and with the reduction at the second stage of proceedings at 20% and 25%. Discussions have been undertaken with MoJ on how best to resource this work and the support they will offer to the Council. Progress on work to date will be brought back to Council in July.	Ruth Pope/ Victoria Obudulu	ACTION ONGOING: An update on work to date to be presented at July Council meeting	
6	Guilty Pleas	MoJ analytical services to provide assistance with cost modelling. MoJ to liaise with Home Office and Attorney General's Office regarding an analysis of the wider implications of the proposed reforms to the CJS of which the guilty plea guideline is a part.	Stephen Muers	ACTION ONGOING: Stephen Muers will provide an update on this work at the July Council meeting	
7	Allocation	Key stakeholders to be consulted on the proposed allocation guideline by email. Council members will receive a draft of the consultation document by email for comments.	Ruth Pope/ Council members	ACTION CLOSED: Council members have now provided comments on the draft and the distribution list.	ACTION CLOSED: Consultation commenced 19 June will conclude 31 July. The results will be presented at the September Council meeting.
8	Robbery	Minor amendments to be made to Model B. Office to work on sentencing levels, and test those via a transcript exercise to ensure sentencing practice is unaffected by guideline.	Vicky Hunt		ACTION ONGOING: Make small adjustments to the sentencing levels, in particular the ranges. Bring back to the Council in September.

SENTENCING COUNCIL MEETING 19 June 2015

9	Theft	Draft new wording to be included in the text regarding recent and relevant convictions re short custodial term (<i>Page</i>), for consideration at the next meeting. Prior to the next meeting circulate key cases via email to the Council to assist in the consideration of the handling and general theft sentence ranges.	Mandy Banks and all Council members		
10	Youth	To redraft the approach to determining the sentence (section four) considering a different approach to assessing seriousness. John Saunders to consider section on allocation in light of Tyneside decision and send comments to	Jo Keatley John Saunders		

		office/Bill Davis.			
11	Health & Safety	Harm model to be revised further to provide guidance as to how to conduct harm assessment.	Lisa Frost Michael Caplan	ACTION CLOSED: Model revised and final consideration to take place at meeting on 17 th July	
12	CCSS	The CCSS report to be updated before publication in accordance with comments from the Council. Communication regarding this final publication to be placed on the Council's website. Further breakdown by stage at which plea was indicated and reduction received to be produced for offenders who pleaded guilty prior to, or on, the PCMH to inform work on guilty plea guideline	Victoria Obudulu	ACTION ONGOING: The further analysis for guilty pleas to be produced and presented in July Council meeting.	ACTION CLOSED: Comments incorporated, report published and news item added on 25 June 2015.

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Sentencing Council

Sentencing Council meeting: 17 July 2015
Paper number: SC(15)JULY03 –Governance and Strategy
Lead official: Claire Fielder
020 7071 5779

1 ISSUE

1.1 To provide an update on progress and make recommendations relating to governance; and consider the Council's strategy and review the question of what the statutory duty to promote consistency means in practice.

2 BACKGROUND

2.1 A review of the Council's ways of working, in particular governance and decision-making, was conducted by the Office and presented to the risk and audit (now governance) subgroup in February 2015. It concluded that the Council was not sufficiently focused on corporate governance and strategy matters and recommended that the Council decide the extent to which it wished to be involved in these matters and the extent to which they were delegated to its subgroups or the Office. The governance subgroup and the Chairman met to discuss these matters in May 2015; the conclusions of that meeting inform this paper.

2.2 The Council considered its future strategy in May 2014, following work conducted by the Office, the governance subgroup and the Chairman. The discussion focused on future work priorities, which have been kept under review and were considered as part of the business plan discussions in April. One of the Council's aims, and a central part of its current strategy, is to promote consistency in sentencing; this term remains undefined.

3 RECOMMENDATION

3.1 That the Council:

- notes the areas in which it is responsible for ensuring good governance, the progress made and the action already taken in light of the May meeting between the governance subgroup and the Chairman (paragraphs 4.1 to 4.4);
- considers the recommendations raised at paragraph 4.5 and agrees that a small additional proportion of Council time should be devoted to governance;

- decides whether its current strategy is sufficiently clear, and whether it wishes to publish a strategy (paragraphs 4.6 – 4.7); and
- decides whether a definition of what it means by consistency is desirable and if so, what this might include (paragraph 4.8 – 4.9).

4 CONSIDERATION

Governance

4.1 The Council operates as an expert body to develop guidelines and increase public confidence in sentencing. Its members are appointed largely on the basis of the contribution they can make to producing high quality guidelines and the vast majority of meeting time is focused on this core business, an approach reaffirmed by the Council in May 2014. However, the Council as an organisation is responsible for ensuring that it complies with governance best practice and that there is clear ownership of the following areas:

- Strategy and planning: setting the strategic direction, including long term planning and approach to cross-cutting issues, confidence and communications and analysis and research;
- Financial accountability and other compliance matters: oversight of the budget, accounts, compliance with processes and ensuring value for money; and
- Performance: delivery of core business and agreed priorities; monitoring officials' and management's performance and management information; resource decisions and oversight of risk management.

4.2 The governance subgroup and Chairman concluded that all of these areas were dealt with adequately. They noted that progress had been made in the following areas:

- Recruitment campaigns for members now target candidates with certain skills and experience in addition to the essential qualifications for the post, to fill identified skills gaps (e.g. communications, risk) or provide expertise in specific areas linked to the future work plan (e.g. youth).
- The action log now records actions agreed for both staff and Council members and tracks progress.
- There is a decision log for each guideline, to record the decisions taken and the rationale for and timing of each decision.
- Papers include questions identifying the issues on which the Council is required to take decisions, to assist members' preparation and improve the audit trail.

- The senior management team of the Office reviews the risk register and the budget on a monthly basis.

4.3 While the governance subgroup and Chairman concluded that the split of responsibility between the Council, its subgroups, the Chairman and Head of Office was broadly right, they agreed that governance matters required a higher profile and that further improvements could be made, without moving the Council away from its proper focus on guideline development and monitoring. They recommended that:

- There should be a short update at each meeting from the Head of Office, covering matters such as the budget, risk and progress against priorities.
- Decisions affecting the ability to deliver Business Plan commitments should be taken by the full Council: for example major changes to the work plan; or a new approach to analysis and research or confidence and communications.
- Operational decisions relating to performance and budget spend should be taken by the Head of Office, with oversight by the Chairman.
- Subgroups needed a refresh of terms of reference and membership.
- Subgroup chairs should report back to the Council immediately after each meeting, rather than twice a year.
- Clarification of the split of responsibilities would help everyone to understand their roles and responsibilities.

4.4 In light of this discussion, some immediate changes have been implemented:

- The terms of reference for the subgroups have been amended to refine their roles and to ensure that they align with each other. Their role as advisory rather than decision-making bodies has been clarified.
- Membership and timing of the subgroups has been reviewed and refreshed to ensure the right mix of skills and experience and telephone conferencing has been introduced (until video conferencing is available).
- Subgroup chairs have a dedicated slot at Council meetings to report on activity and escalate any issues requiring the full Council's input or a decision.
- A table setting out the roles of the Council, subgroups, Chairman and head of Office illustrates the responsibilities of each in relation to governance matters:

	Financial	Strategy	Performance
Council	Oversight of spend against forecast as part of Business Plan approval.	Approval of work plan and underpinning strategies (e.g. comms and confidence, analysis and research); reviewed at mid year.	Annual review of strategy and progress against objectives. Approval of Annual Report and Business Plan, including financial information.
Chairman	Oversight of Head of Office's management of budget.	Development of work plan and setting direction (with Head of Office).	Oversight of performance of Head of Office and delivery of plans. Signs off consultations. Council member annual reviews.
Head of Office	Management of delegated budget to ensure value for money.	Development and delivery of work programme and Business Plan (with Chairman).	Management of risks, including taking appropriate mitigating action. Takes resource decisions, in consultation with Chairman. Signs off Council papers. Performance management of Office.
Governance subgroup	Assesses adequacy of accounting policies, reviews management of budget and accounts and process for reviewing accounts. Oversight of non standard appointments or procurement.	Annual discussion with Chairman to review Council progress over preceding year, provide advice on effective governance and contribute to setting the strategic direction for the Council by providing support and challenge to Chairman and Head of Office.	Reviews risks identified on register with a view to ensuring that all risks to delivery of objectives and wider operating environment have been identified. Reviews mitigating actions for risks identified as black or increasing for two months.
Analysis and Research subgroup	Provides assurance that analysis and research budget is being reviewed regularly and managed effectively by the Office and that any procurement is appropriate, cost effective and ethical.	Advises on A&R work programme so that it aligns with Council's statutory commitments and work plan; and identifies research priorities.	Advises on scoping, design and methodology of analytical projects, assisting in the specification of these projects and comments on draft research reports, statistical bulletins and resource assessments. Provides assurance that A&R risks are being reviewed and managed effectively.
Confidence and Communications subgroup	Provides assurance that comms budget is being reviewed regularly and managed effectively by the office and that any procurement is appropriate, cost effective and ethical.	Advises on comms & confidence work plan so that it aligns with Council's statutory commitments and work plan; and provides comments on draft plans and strategies.	Plans and assists in specification of communications projects and provides assurance that comms risks are being reviewed and managed effectively.

4.5 It is proposed that the following changes are also introduced, with effect from September 2015. Combined with more frequent subgroup reporting, it is envisaged that this amounts to an average of an additional 15 minutes per meeting:

- There is a short update from the Head of Office at each meeting, dealing with operational matters such as budget, staffing, risk, and progress against plans, to ensure that the Council is aware of any difficulties at an early stage and to provide assurance that progress is being made.
- Significant in-year changes to the work programme (such as the decision to delay breach) must always be signed off by the Council.

Question 1: Is the Council content with the changes already implemented?

Question 2: Does the Council have any observations on the recommendations at paragraph 4.5, or is it content with the changes proposed?

Question 3: Do Council members have any further comments on the Council's approach to governance and decision-making?

Strategy

4.6 In May 2014 the Council reviewed its strategy. It confirmed that its core function should remain the production of offence-specific guidelines, with the aim of being recognised as an authority and expert body in sentencing matters, which promotes greater consistency in sentencing and increased knowledge and understanding of sentencing matters in line with its statutory duties. It confirmed that the pace of guideline production should continue, but that this should include overarching guidelines as well as offence-specific ones. In light of the separate review of the CCSS it did not take decisions on analysis and research, but has subsequently agreed a new strategy. It agreed to give priority to confidence work, and additional resource in the communications team over the past year enabled the Office to deliver an event with Parliamentarians, to do more work to engage professional groups and to establish what level of interest different sectors of the public had in sentencing.

4.7 In April 2015, the Council reviewed the work plan and agreed its priorities for the next three years. However, although the Council publishes a Business Plan, which includes aims and objectives and a summary of the three year plan, it does not have a published strategy.

Question 4: Are members content that the Council's strategy is sufficiently clearly understood and articulated through existing corporate reports, or do they see value in a written strategy?

4.8 One question which has occupied the Council in the past is the definition of consistency it has in mind when describing its main aim (and indeed when considering whether it fulfils its statutory function). There is no statutory definition or other consensus on what this means. The Council has previously concluded that the consistency it is aiming for is consistency of approach rather than consistency of outcome, but even this is not easy to define. The question has arisen in the context of specific guidelines (e.g. sentencing outcomes for robbery cases in the transcript exercise, and theft) and as a more general question of principle. It has also arisen in the context of evaluation, although obtaining data for this is problematic and might not be possible in all cases.

4.9 There is value in all Council members and staff understanding consistency in the same way, in order to ensure that we are working towards the same goal, which may be explained in a straightforward way to our stakeholders, and to inform our future approach to evaluation of guidelines. The Council is invited to consider whether it can reach consensus that we are working towards any of the following points, which might be considered an informal definition. The least controversial are marked in green, the controversial in amber, and the radical in red, and are intended to prompt debate rather than be seen as firm recommendations.

- Consistency means judges and magistrates:
 - Approaching and working through the sentencing process in the same way, following the step by step approach set out in the guidelines and considering the issues in the same order.
 - Interpreting the guidelines in a predictable way, understanding the terminology in broadly the same way.
 - [In most cases] reaching the same category and starting point when presented with similar facts.
 - [In most cases] attaching the same weight to the factors they are considering, when presented with similar facts.
 - [In most cases] reaching the same sentence outcome and similar sentence lengths.

Question 5: Do you agree that having a common understanding of consistency would be helpful?

Question 6: If so, what should this include?

Question 7: Do you agree that this should remain an informal definition, rather than a published definition?

Question 8: Is the Council content with this approach in light of the risk identified at paragraph 6.3 below?

5 IMPACT

5.1 There will be a limited impact on Council business arising from the changes to governance. It is due to consider and approve the annual report in September, and the work plan will be reviewed in October, at the mid year point. An update on the budget will be provided at that stage. A decision to publish either a strategy or a definition of consistency would have a greater impact on resources and potentially on public perception.

6 RISK

6.1 There is a risk that “more governance” means less time for discussion of guidelines. The Chairman has expressed the firm view that the Council meetings should predominantly be about the guidelines; however he also considers it essential that the Council is more involved in the work of the subgroups and is aware of the broader issues. This risk will be mitigated by allowing short, focused time slots and continuing to provide information in writing whenever appropriate.

6.2 There may be a risk of delay to projects where the Council’s formal sign off is required. Where matters are time critical, it is proposed that Council members will be invited to make decisions between meetings (as currently happens with clearance of consultation documents).

6.3 There is a risk that having a clearer definition of consistency may lead to greater scrutiny of the Council’s success in delivering this element of its statutory duties. There is a further risk that the public will continue to view consistency as meaning consistency of outcome. On the other hand, having no such definition or common understanding also risks opening the Council up to scrutiny.

6.4 Depending on the scope of any definition, there may be a risk that we are unable to collect the data necessary to evaluate whether or not we are achieving it: this is a particular challenge in relation to quantitative evaluation.

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Sentencing Council

Sentencing Council meeting: 17 July 2015
Paper number: SC(15)JUL04 – Costs of sentencing
Lead official: Caroline Nauth-Misir (analysis and research)
0207 071 5778

1 ISSUE

1.1 This paper asks the Council to review the attached note which provides links to information on the cost of different sentencing options, before it is published on the Council's website.

2 RECOMMENDATION

2.1 It is recommended that Council signs off the note in preparation for publication on our website (see 3.4 below).

3 CONSIDERATION

3.1 Following meetings the Chairman had with the Justice Select Committee last year there was a proposal to produce a note of various sentencing costs for publication on the Council's website.

3.2 The Chairman agreed with Sir Alan Beith that he would consider publishing guidance on the relative costs of different custodial and non custodial sentence options, in part to address the Justice Committee's concern about the overall financial impact of sentencing guidelines, and the Committee's interpretation of the Council's duty to have regard to "the cost of different sentences and their relative effectiveness in preventing re-offending". The brief was to set out the average unit costs of the full range of sentencing options for different individuals.

3.3 At April's Council meeting it was decided that a note should be produced, to be published on the Analysis and Research section of the Council's website, providing links to relevant MoJ figures currently published on the costs of sentencing. In addition the note should mention that monitoring the cost of sentencing is not a function of the Council.

3.4 A short note has been drafted (see attached), providing links to figures published by the National Offender Management Service (NOMS) for the average cost of a prison place for a prisoner per year and the annual cost of a prisoner undertaking a Community Order or Suspended Sentence Order. The intended audience of the note is the general public.

3.5 The note has been reviewed by colleagues in MoJ, NOMS and the communications and confidence team.

Question 1: Is the Council content with the attached note?

4 RISK

4.1 There is a risk that, as monitoring the cost of sentencing is not a function of the Council, readers of this note on the Council's website might think that sentencers are being encouraged to consider costs when sentencing rather than the appropriate disposal for the offender/ offence committed. This could therefore damage the Council's reputation and potentially result in negative media attention. To mitigate this risk it is recommended that the Council does not proactively publicise the note. In addition, media lines will be provided to the press office in case there are any media enquiries.

Question 2: Does the Council wish to proceed with publication considering the risk involved?

Question 3: If so, does the Council agree that the note should not be publicised?

Sentencing Council

Information related to the costs of sentencing

The Sentencing Council aims to help people have a better understanding of sentencing so that they might feel more confident that it is a fair and balanced process.¹

One aspect of how sentencing works relates to how much each type of sentence costs and how effective it is at reducing re-offending. While the Council must have regard to the cost of different sentences,² monitoring the costs of sentencing falls within the remit of the Ministry of Justice. Similarly, sentencing guidelines produced by the Sentencing Council are not influenced by the relative costs of different sentences – our remit is to ensure that the sentencing process enables judges to sentence fairly.

Information on the cost of different sentencing options is published by the National Offender Management Service, an executive agency of the Ministry of Justice. The figures published include the average cost of a prison place and of holding a prisoner per year and the annual cost of a prisoner undertaking a community order or a suspended sentence order.

Below are links, where available, to information published by the National Offender Management Service relating to the cost of various sentencing options.

Prison costs

Information on the average cost of a prison place/prisoner in [2013/14](#).

This information is broken down in tables by [prison function type and establishment](#).

[Supplementary tables](#) show this information broken down by male and female prisons, adult and youth prisons and both public sector and contracted prisons. A breakdown of expenditure and unit cost is also provided in these tables.

This information is due to be updated with 2014/15 figures at the end of October 2015.

Probation costs

Information on the average cost of i) a community order or suspended sentence order, ii) offender supervision on licence post-release and iii) a Pre-Sentence report in [2012/13](#).

These figures are broken down by probation trust in [these tables](#).

The publication of probation trust unit costs was suspended while the probation service restructured, but work is under way to develop unit costs for the National Probation Service (NPS) and NOMS will seek to publish this information once it is sufficiently robust. This will include the cost of activities that NPS choose to purchase from Community Rehabilitation Companies (CRCs), but not those activities which NOMS has contracted CRCs to deliver.

For further information on any of these figures please contact the Planning & Analysis Group, National Offender Management Service at statistics.enquiries@justice.gsi.gov.uk.

¹ s.129(2) Coroners and Justice Act 2009

² s.120(11)(e) Coroners and Justice Act 2009

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Sentencing Council

Sentencing Council meeting: 17 July 2015
Paper number: SC(15)JUL05 – Theft
Lead Council member: Sarah Munro
Lead officials: Mandy Banks
0207 071 5785

1 ISSUE

1.1 This is the final consideration of the theft guidelines post consultation. The paper is focused on sentence levels.

1.2 The timetable is for the guidelines to be signed off at this meeting, published on 6 October, and come into force in January 2016.

2 RECOMMENDATION

2.1 That the Council:

- agrees the sentence levels in the handling guideline, para 3.1, page 1 onwards;
- agrees the proposed changes to the sentence levels in the general theft guideline, para 3.8, page 3 onwards;
- agrees the new wording regarding short custodial terms in the shop theft guideline, para 3.25 page 8;
- provides any comments on the outline of the response to the consultation paper (Annex G) by email by 24 July, para 3.29, page 9; and
- provides any comments on the style/layout of the guidelines by 24 July, para 3.30, page 9.

3 CONSIDERATION

Handling guideline – Annex A

3.1 At the last Council meeting the culpability factors were discussed and it was decided to move ‘*possession of recently stolen goods*’ from culpability A to B. It was

also agreed at the last meeting to reword the factor in culpability A '*advance knowledge that the stolen goods were to come from a domestic burglary or robbery*' to '*advance knowledge of the primary offence*', as there is a harm factor of '*property stolen from a domestic burglary or robbery*'. In order to assist in the consideration of the sentence ranges, the guidelines were tested against some recent Court of Appeal cases, which were emailed to Council members. This analysis revealed the possession of recently stolen goods was a key factor in all the cases, and that without this factor being in culpability A, the guideline would give lower sentences than the sentences given in the courts for those cases. This was because the offenders in those cases would instead fall into culpability B, which did not contain the level of custodial sentences the courts gave in those cases.

3.2 Accordingly, the office's suggestion following this analysis was to increase the sentence ranges in culpability B to accommodate the levels of custody that offenders were getting in the courts, if this factor remained in culpability B in the new guideline.

3.3 Comments from Council members following this analysis however indicated that the majority preference was instead to retain this key factor in A, to reflect sentencing principles for handling cases as set out in *Webbe*¹. Council members also suggested that this factor is reworded to '*possession of very recently stolen goods from a domestic burglary or a robbery*' – this can be seen at page 2 of **Annex A**.

3.4 If the factor of '*possession of very recently stolen goods from a domestic burglary or robbery*' is to remain in culpability A, the office's suggested increases to the sentence ranges in culpability B, following the recent analysis are no longer necessary, this was only suggested to allow sentences seen in the courts to be given if offenders were not falling into A, but into B. However, a concern regarding placing the factor in A was raised by some Council members, in that it will capture many offenders and place them into A, perhaps more than was originally intended, an offender who buys a stolen watch for £50 from a man in a pub, which has been very recently stolen from a domestic burglary, but who has no other knowledge or involvement in the original offence, for example. Many domestic burglary cases involve goods being stolen and passed on to others within 24 hours, so concern was raised, that particularly within the magistrates courts, placing this factor in A may cause sentence inflation.

¹ R v Webbe and others [2001] EWCA Crim 1217

3.5 As the guideline already contains the additional harm factor of *'property stolen from a domestic burglary or a robbery'*, to avoid the risk of double counting following the rewording of the culpability factor, Council members suggested that this harm factor is reworded to *'property stolen from a domestic burglary or robbery (unless this has already been taken into account in assessing culpability)'*. This can be seen at page 3 of **Annex A**.

3.6 Also within the harm factors for this guideline there was a harm factor of *'items stolen of an economic, sentimental or personal value,'* this factor also appears in the general theft guideline, (and similar wording is also used in the burglary guideline).² It refers to any additional *non financial* harm caused by having certain items stolen, for example a laptop stolen with a student's PHD on, or critical work documents, which have economic value, or having a mobile phone stolen with all someone's telephone numbers stored in the memory, which has personal value. To avoid confusion and to clarify that this factor refers to any additional non financial harm caused by the offence (financial harm already being captured by the guideline) it is suggested that this is reworded to *'items stolen were of substantial (non financial) economic, sentimental or personal value to the owner'*. This can also be seen on page 3 of **Annex A**.

3.7 As set out in the last Council paper, these sentence ranges have been adjusted since the consultation. This is partly to take into account the fact that the assessment of harm within the guideline has changed since the consultation, cases can be moved up a category and sentences increased if there is significant additional harm, so some of the ranges have been slightly lowered to reflect this, to avoid escalation in sentencing due to any harm uplift. The lowering of the ranges also brings the guideline more into proportion with the money laundering guideline. Earlier work of testing the guideline post consultation against Court of Appeal cases had also showed that the ranges needed to be lowered. It is therefore recommended that Council consider and agree the proposed ranges on page 4 of **Annex A**.

Question 1: Does the Council wish to replace the reworded factor 'possession of very recently stolen goods from a domestic burglary or a robbery' into culpability A?

² The harm wording in burglary reads 'theft of/damage to property causing a significant degree of loss to the victim (whether economic, sentimental or personal value)

Question 2: Does the Council agree to the rewording of the harm factor relating to 'property stolen from a domestic burglary or robbery?'

Question 3: Does the Council agree to the rewording of the harm factor relating to items stolen of an economic, sentimental or personal value?

Question 4: Does the Council agree to the sentence levels for handling?

General theft guideline- Annex B

3.8 At the last Council meeting it was decided to further test the general theft guidelines using sentenced cases, with an emphasis on breach of trust and high value car theft cases, to assist in the consideration of the sentencing ranges. Accordingly a number of cases were circulated to Council members post Council.

3.9 In order to provide appropriate sentencing levels for high value sophisticated car theft cases, in light of some of the sentenced cases studied, the office proposed that the ranges within category 1 shown at the last meeting were increased back to the levels used in the consultation, which can be seen at page 4 of **Annex B**.

3.10 Concern was raised at the last meeting regarding adequate sentencing for breach of trust cases involving carers, so following the last Council meeting a number of sentenced breach of trust cases concerning carers were circulated, which demonstrated that the guideline would give the appropriate sentence ranges in those cases. However, following consideration of these cases, some Council members then raised further concerns regarding breach of trust cases involving large sums in theft from employer cases, particularly with reference to *Clarke [1998] 2 Cr App R 137*, which gave indications as to the likely sentences in relation to the values stolen. These concerns raised by Council members were carefully considered, and further testing of a number of sentenced cases was conducted by the office staff.

3.11 This work has indicated that the guideline will provide the appropriate sentence levels for high value employee theft cases. There does not appear to be a risk that the guideline will provide lower sentences than currently given in the courts. However, this work across the general theft guideline has shown that there is a risk of escalation in sentencing with the guideline as drafted, due to the number of factors in culpability A. This issue is further discussed at para 3.21.

3.12 As part of the consideration of the robustness of the sentencing ranges following the last Council meeting, some Council members suggested that the values within the general theft guideline perhaps should be aligned to the values used in the

handling guideline (under £1000, £1,000 to £10,000, £10,000 to £100,000 and £100,000 and above). The Council will recall that these figures were only incorporated into the handling guideline at the last meeting, in order to reflect the principles for sentencing outlined in *Webbe*, and to deal with an issue in that particular guideline to prevent escalation by ensuring only the most serious offenders fell into category one, which has the highest sentences.

3.13 In the consultation version, the values used for both general theft and handling offences were the same. There was a lack of reliable data regarding the values involved in theft offences generally, as so many are sentenced in magistrates courts. The consultation sought to obtain views on the appropriateness or otherwise of the proposed values, and the majority of the responses (over 80 per cent) agreed with the values proposed in the general theft guideline. The general theft guideline is to be used for a number of offences, theft from person, bike theft as well as breach of trust cases, which is why the lower category is for offences under £500.

3.14 However, as part of the re testing of the general theft guideline against sentenced cases referred to in para 3.10, the guidelines was tested using the both the handling figures, and the figures in the SGC guideline for breach of trust cases (less than £2,000, £2,000 to £20,000, £20,000 to £125,000 and £125,000 and above). This analysis showed that using either of the different set of values would be of no substantial benefit to the guideline and would require revision of the sentencing ranges if current sentencing practice is to be maintained. Therefore, it is not recommended that the values in this guideline are altered. Using the values for breach of trust cases from the SGC guideline would not be appropriate in any case, given that this is just one offence within this guideline, and so it may alter sentencing for the rest of the non breach of trust cases. Accordingly, it is recommended that the values used within the general theft and handling guideline remain different.

3.15 Following consideration of the ranges after the last Council meeting, some Council members raised an issue regarding the wording at category 1 within the table at step 2 *'where the value greatly exceeds £50,000, it may be appropriate to go outside the category range'* (this wording is highlighted on page 4 of **Annex A**). Given that the top of the range is 6 years' custody and the statutory maximum is 7 years, this wording has no real effect.

3.16 This wording appeared within the consultation version, within the wording on harm. Due to the changes to the assessment of harm post consultation, this wording was then moved to within category 1 of the sentencing table for shop theft, general

theft, handling and making off without payment. The reason why this wording was included in the consultation version was primarily to deal with high value, sophisticated shop theft cases, considerably above £1,000. Within that context, the wording is appropriate as the top of that sentencing range is 3 years, against a statutory maximum of 7 years. It is also relevant within the handling and making off without payment guidelines as they both have ranges that stop some way before the maximum. However, it was an error to have included this wording in the general theft guideline at consultation, so it is suggested that the wording is removed from that guideline only.

3.17 With the top of the sentence range reaching 6 years and the statutory maximum being 7 years, there is little headroom. *Clarke* contemplated that consecutive sentences could be used to achieve sentences of 10 years or more. (prior to the maximum for theft being reduced from 10 to 7 years custody) when large sums were stolen. Accordingly a suggestion has been made by a Council member to include some new wording directly under the sentencing table at step 2, to read:

'The table above relates to single offences. Where there are multiple offences, consecutive sentences may be appropriate. Please refer to the Offences taken into Consideration and Totality guidelines. Where multiple offences are committed in circumstances which justify consecutive sentences, and the total amount stolen is in excess of £1,000,000, then an aggregate sentence in excess of 7 years maximum may be appropriate.'

3.18 This wording has been included in tracked changes under the table on page 4 of **Annex A**. Alternatively, the wording used throughout the fraud guideline could be inserted into this guideline: *'consecutive sentences for multiple offences may be appropriate where large sums are involved'*.

3.19 It may also be helpful to note the reason why the financial starting points no longer appear within the text. As discussed at the April Council meeting, one of the findings of the road testing of the guidelines showed that the wording around adjusting the starting point for value caused confusion to sentencers, and/or was ignored. In the second round of road testing the wording regarding how to adjust the starting point based on value was clarified and given more prominence within the text, but the new wording still caused confusion. Given this, and the over-riding concern that the dual method of assessing harm consulted on was a factor in the inconsistency in sentencing, one integrated method of assessing harm was created, which meant the reference to starting points were removed. At the April meeting the

use of additional aggravating and mitigating factors (*higher value within category range/ lower value within category range*) to differentiate between values in the categories was suggested, but the Council felt this was unnecessary. This option could be reconsidered if the Council wished as a way to differentiate between values within the categories.

3.20 The Council may recall that the findings of the road testing and transcript exercises discussed at earlier Council meetings revealed that the consultation version of the guideline was having an inflationary effect for breach of trust cases, causing an average increase in sentencing of around 7 months. As a result of the earlier research work, two culpability A factors were removed, and one added to B '*Breach of degree of trust or responsibility*', to differentiate between different levels of breaches of trust, otherwise all breaches of trust would tend to fall into culpability A.

3.21 Our recent analysis has suggested that the guideline as currently drafted is still liable to have an inflationary effect in some cases, as discussed above in paragraph 3.11. It is recommended that a further two factors currently in culpability A are removed. The first is '*Offence conducted over a sustained period of time*'. The recent analysis of cases showed that where this factor applied but no other culpability A factors were present, sentences would be higher under the draft guideline than currently sentenced. It is therefore suggested that this factor is moved to culpability B, or is added as an aggravating factor. Serious, high value breach of trust cases (both employees/carer type cases) will still fall into culpability A due to the presence of other culpability A factors, namely '*breach of a high degree of trust or responsibility*', '*sophisticated nature of offence/significant planning*' or '*deliberately targeting victim on basis of vulnerability*'.

3.22 Also, it is suggested that '*large number or persons affected by the offence*' is removed from culpability A as the presence of this factor could lead to double counting. One of the reasons this factor was included was to reflect metal thefts, however the harm factors of '*damage to heritage assets*' and '*disruption caused to infrastructure*' adequately capture this. This factor does not tend to be a significant factor in breach of trust cases.

3.23 Removing these two factors from culpability A will still allow the most serious cases to be captured within culpability A, but will help to address the risk of escalation of sentencing within this guideline, making the culpability factors more balanced, (as the more culpability factors there are, the more likely it is that offenders will fall into that category). In addition, there are a number of aggravating factors that

could be used if appropriate to increase a sentence, including outside the category range.

3.24 Further to the adjustments to the sentence ranges described in paragraph 3.9, it is also recommended that the top of the ranges in 1C and 2B are increased to one years' custody in both, in order to meet the bottom of the range in the next category of culpability (1B and 2A respectively). By doing so this provides transition between the categories which is important due to the blurring of levels of culpability for some offenders, so offenders may sit on the cusp of culpability between the two boxes.

Question 5: Does the Council wish to add either the new wording proposed regarding consecutive sentences or the wording from the fraud guideline into general theft?

Question 6: Does the Council agree to remove the wording regarding moving outside the range in category 1 from the box in the table?

Question 7: Does the Council wish to add aggravating or mitigating factors to reflect different financial values within the ranges?

Question 8: Does the Council agree to remove the factor of 'large number of persons affected by the offence' and 'offence conducted over a sustained period of time' from culpability A? If so, does the Council wish to add them as aggravating factors instead?

Question 9- Does the Council agree to the sentence ranges for general theft?

Shop theft- Annex C

3.25 At the last meeting it was agreed to include some additional wording regarding short custodial sentences within the text relating to relevant and recent convictions in the aggravating factors. The suggested wording can be seen at page 4 of **Annex C**, and reads: *'Any custodial sentence should be for the shortest possible term'*. This reflects the wording in the statute³ :

'...The custodial sentence must be for the shortest term (not exceeding the permitted maximum) that in the opinion of the court is commensurate with the seriousness of the offence, or the combination of the offence and one or more offences associated with it.'

³³ Criminal Justice Act 2003 c. 44 Part 12 Chapter One 153 (2)

Question 10: Does the Council agree to the proposed wording regarding short custodial sentences?

3.26 The Council indicated that they were content with the sentence levels for shop theft at the last meeting, therefore no amendments have been made.

Question 11: Does the Council agree to retain the sentence levels at page 3 of Annex C?

Going equipped – Annex D

3.27 At the last meeting it was agreed to remove the word ‘*Circumstances suggest*’ from the fifth factor in culpability A, so that the factor now reads ‘*Offender equipped for robbery or domestic burglary*’. This can be seen at page 2 of **Annex D**. At the meeting the Council also decided to change some of the sentences in greater harm, culpability A and B, these have been changed and can be seen in track changes on page 3 of **Annex D**.

Question 12- Does the Council agree to retain the sentence levels at Annex D?

Abstracting Electricity (Annex E) and Making off without Payment (Annex F)

3.28 At the last meeting the Council had no comments on the sentence ranges within these two guidelines, therefore no amendments have been made.

Question 13 – Does the Council agree to retain the sentence levels at annexes E and F?

Proposed outline of the response to the consultation paper – Annex G

3.29 A proposed outline of the response to the consultation paper is attached at **Annex G**. Any comments on the outline should be provided by email by the **24th July**. Once the paper has been drafted it will be circulated around all Council members for comments in the week commencing **3rd August**. The paper and guidelines will need to be finalised 6 weeks before publication, by the **25th August**, in order for the proof reading, printing processes and so on to take place.

Style/layout of the definitive guideline

3.30 All the drafting suggestions made at the last meeting have been made, such as ensuring that there is consistency throughout with headings, and with placement of key text (the wording regarding how to assess culpability had previously appeared in different places, and so on). Another suggestion was to separate the sections on culpability and harm, so that harm appears on the third page of the guidelines, rather than immediately under culpability on page 2, in order to give the harm wording

prominence. This has been done and can be seen throughout the guidelines (except for shop theft) at **Annexes A-F**. For some guidelines the sentencing tables sit underneath the harm section on the third page, for others it will not fit on one page and it appears on page 4.

3.31 Previously the emphasis had been to make the guidelines as streamlined and as short as possible, following feedback during the consultation that the guidelines were too lengthy, and that sentencers wanted it to run to as few pages as possible. This more concise way of presenting the text can still be seen in the shop theft guideline at **Annex C**, which has harm and culpability on one page. This aim of conciseness should not be at the expense of making the guideline difficult to use because the information is crammed together in a short space, however. It would be helpful if the Council could indicate their preference to having harm on a separate page or not (the final exact layout of the guidelines will be dependant on the technical templates used by the printers however.) Any further style or drafting comments on the guidelines should be made via email before the **24th July**.

3.32 At the last meeting the reference to 13 weeks custody throughout the theft guidelines was discussed, given that 12 weeks is used elsewhere within recent guidelines (fraud and assault). It was agreed that all references to 13 weeks would be altered to 12 weeks, and this has been done throughout the guidelines.

4 IMPACT/RISKS

4.1 There were clear risks in producing a new theft guideline, due to the very high volumes of theft offences sentenced in the courts, and the potential impact any change to sentencing practice for these offences could have. During the work on the draft guideline it became apparent that there were inconsistencies within current sentencing practice for theft offences, particularly in relation to shop theft. The aim of the work has been to focus on consistency of approach to sentencing theft offences, not consistency of outcome. Care has been taken to avoid escalation of sentencing within the new guideline, for example by carefully controlling the effects of taking into account any additional harm to victims other than the financial harm of offences within the guidelines.

4.2 The resource impact published alongside the consultation stated that it was anticipated that there would be no effect on custodial sentence lengths, or numbers of community orders, and as a result no significant impact on prison or probation services was anticipated. A new resource assessment will be produced alongside the definitive guideline when published which will reflect the sentence levels in this

guideline. Therefore, if for example, the Council wished to change current sentencing practice for breach of trust cases by making sentences more severe, the impact of this on correctional resources would need to be estimated and the resource assessment would need to be updated.

4.3 We are also currently commissioning some work to support an evaluation of the theft guideline and will start collecting data for this from the courts in the autumn. This will enable us to identify if there are any potential impacts of the guideline on sentencing outcomes; however, it should be noted that findings from the evaluation will not be available until later in 2016 due to the need to also collect data from courts after the guideline has been in force for a period of time.

4.4 The communications team will prepare a plan to handle the launch of this guideline in October, taking into consideration likely areas of interest for the media and other stakeholders for example, how prolific offenders are dealt with by the courts. We will consider the likely reaction of stakeholder groups such as retailers and will seek quotes from those who will support the guidelines' publication.

Question 14 - Are the Council content that the impact and risks have been adequately considered and mitigated against? If not, are there any other actions or considerations that should be undertaken prior to publication?

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Annex A

Handling stolen goods

Theft Act 1968 (section 22)

Triable either way

Maximum: 14 years' custody

Offence range: Discharge - 8 years' custody

STEP ONE
Determining the offence category

The court should determine the offence category with reference **only** to the factors identified in 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:	
<ul style="list-style-type: none"> ▪ A leading role where offending is part of a group activity ▪ Involvement of others through coercion, intimidation or exploitation ▪ Abuse of position of power or trust or responsibility ▪ Professional and sophisticated offence ▪ Advance knowledge of the primary offence ▪ Possession of very recently stolen goods from a domestic burglary or robbery 	
B - Medium culpability:	
<ul style="list-style-type: none"> ▪ Other cases where characteristics for categories A or C are not present ▪ A significant role where offending is part of a group activity ▪ Offender acquires goods for resale ▪ Some degree of planning involved 	
C - Lesser culpability:	
<ul style="list-style-type: none"> ▪ Performed limited function under direction ▪ Involved through coercion, intimidation or exploitation ▪ Little or no planning/sophistication ▪ Limited awareness or understanding of offence ▪ Goods acquired for offender's own personal use 	

- Deleted:** <#>¶
<#>Closeness in time or place to the underlying offence ¶
<#>The provision in advance of the underlying offence of a safe haven or the means of disposal of stolen property¶
- Deleted:** Advance knowledge that the stolen goods were to come from a domestic burglary or a robbery¶
Possession of recently stolen goods
- Deleted:** <#>Possession of recently stolen goods¶
- Deleted:** <#>Offender makes self available to other criminals as willing to handle the proceeds of crime¶
<#>Offences are committed by offender as part of commercial activity¶
<#>¶
<#>Other cases where characteristics for categories A or C are not present¶

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.

The handling of stolen goods is ancillary to other offences, often to a serious underlying offence

Harm is assessed by reference to the **financial value** (to the loser) of the stolen goods **and any significant additional harm** associated with the underlying offence on the victim or others – examples of additional harm may include but are not limited to:

Property stolen from a domestic burglary or a robbery [\(unless this has already been taken into account in assessing culpability\)](#)

Items stolen [were](#) of [substantial \(non financial\) value](#), economic, sentimental or personal [to the owner](#)

Metal theft causing disruption to infrastructure

Damage to heritage assets

Items stolen which may endanger life

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HARM	
Category 1	Very high value goods stolen (above £100,000) or High value with significant additional harm to the victim or others
Category 2	High value goods stolen (£10,000 to £100,000) and no significant additional harm or Medium value with significant additional harm to the victim or others
Category 3	Medium value goods stolen (£1000 to £10,000) and no significant additional harm or Low value with significant additional harm to the victim or others
Category 4	Low value goods stolen (up to £1000) and Little or no significant additional harm to the victim or others

STEP TWO
Starting point and category range

Having determined the category at step one, the court should use the starting point to reach a sentence within the appropriate category range in the table below.

The starting point applies to all offenders irrespective of plea or previous convictions.

Harm	Culpability		
	A	B	C
<p>Category 1 Where the value greatly exceeds £100,000, it may be appropriate to move outside the identified range. Adjustment should be made for any significant additional harm where very high value <u>stolen</u> goods are <u>handled</u>.</p>	<p>Starting point 5 years' custody</p> <p>Category range 3-8 years' custody</p>	<p>Starting point 2 years' 6 months custody</p> <p>Category range 1-4 years' custody</p>	<p>Starting point 1 years' custody</p> <p>Category range 12 weeks custody-1 year 6 months custody</p>
<p>Category 2</p>	<p>Starting point 3 years' custody</p> <p>Category range 1 year 6 months -4 years' custody</p>	<p>Starting point 1 years' custody</p> <p>Category range 26 weeks-1 year 6 months custody</p>	<p>Starting point High level community order</p> <p>Category range Low level community order-26 weeks custody</p>
<p>Category 3</p>	<p>Starting point 1 years' custody</p> <p>Category range 36 weeks'-2 years' custody</p>	<p>Starting point High level community order</p> <p>Category range Low level community order-36 weeks custody</p>	<p>Starting point Band C fine</p> <p>Category range Band B fine –Low level community order</p>
<p>Category 4</p>	<p>Starting point High level community order</p> <p>Category range Medium level community order – 36 weeks custody</p>	<p>Starting point Low level community order</p> <p>Category range Band C fine –High level community order</p>	<p>Starting point Band B fine</p> <p>Category range Discharge –Band C fine</p>

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Consecutive sentences for multiple offences may be appropriate- please refer to the Offences Taken Into Consideration and Totality Definitive Guideline.

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

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:

- Seriousness of the underlying offence, for example, armed robbery
- Deliberate destruction, disposal or defacing of stolen property
- Damage to third party for example, loss of employment to legitimate employees
- Failure to comply with current court orders
- Offence committed on licence
- Offences taken into consideration
- Established evidence of community/wider impact

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- 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
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives
- Determination and/or demonstration of steps having been taken to address addiction or offending behaviour

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, or a restitution order.

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.

General Theft

Including:

Theft from the person

Theft in a dwelling

Theft in breach of trust

Theft from a motor vehicle

Theft of a motor vehicle

Theft of pedal bicycles

and all other section 1 Theft Act 1968 offences, excluding theft from a shop or stall

Theft Act 1968 (section 1)

Triable either way

Maximum: 7 years' custody

Offence range: Discharge - 6 years' custody

STEP ONE

Determining the offence category

The court should determine the offence category with reference only to the factors identified in 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 coercion, intimidation or exploitation
- Breach of a high degree of trust or responsibility
- Sophisticated nature of offence/significant planning
- Theft involving intimidation or the use or threat of force
- Deliberately targeting victim on basis of vulnerability

Deleted: Significant

Deleted: Offence conducted over sustained period of time
Large number of persons affected by the offence

B - Medium culpability:

- A significant role where offending is part of a group activity
- Some degree of planning involved
- Offence conducted over sustained period of time
- Breach of degree of trust or responsibility
- All other cases where characteristics for categories A or C are not present

C - Lesser culpability:

- Performed limited function under direction
- Involved through coercion, intimidation or exploitation
- Little or no planning
- Limited awareness or understanding of offence

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 assessed by reference to the **financial loss** that results from the theft **and any significant additional harm** suffered by the victim or others – examples of significant additional harm may include but are not limited to: items stolen of an economic, sentimental or personal value; high level of inconvenience caused to the victim or others; consequential financial harm to victim or others; emotional distress, fear/loss of confidence caused by the crime; risk of or actual injury to persons or damage to property; impact of theft on a business; damage to heritage assets; disruption caused to infrastructure

Intended loss should be used where actual loss has been prevented.

HARM

Category 1	Very high value goods stolen (above £50,000) or High value with significant additional harm to the victim or others
Category 2	High value goods stolen (£5,000 to £50,000) and no additional harm or Medium value with significant additional harm to the victim or others
Category 3	Medium value goods stolen (£500 to £5,000) and no additional harm or Low value with significant additional harm to the victim or others
Category 4	Low value goods stolen (up to £500) and Little or no significant additional harm to the victim or others

STEP TWO

Starting point and category range

Having determined the category at step one, the court should use the starting point to reach a sentence within the appropriate category range in the table below.

The starting point applies to all offenders irrespective of plea or previous convictions.

Harm	Culpability		
	A	B	C
Category 1 Where the value greatly exceeds £50,000, it may be appropriate to move outside the identified range. Adjustment should be made for any significant additional harm factors where very high value goods are stolen.	Starting point 4 years' custody Category range 3 - 6 years' custody	Starting point 2 years 6 months' custody Category range 1 - 4 years' custody	Starting point 36 weeks' custody Category range High level community order – 1 year's custody
Category 2	Starting point 2 years' custody Category range 1 - 3 years' custody	Starting point 36 weeks' custody Category range 12 weeks' - 1 years' custody	Starting point Medium level community order Category range Low level community order - 12 weeks' custody
Category 3	Starting point 36 weeks' custody Category range 12 weeks' - 1 year 6 months' custody	Starting point Medium level community order Category range Low level community order - 12 weeks' custody	Starting point Band C fine Category range Band B fine – Low level community order
Category 4	Starting point High level community order Category range Medium level community order – 12 weeks' custody	Starting point Low level community order Category range Band C fine – Medium level community order	Starting point Band B fine Category range Discharge – Band C fine

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The above table refers to single offences. Where there are multiple offences, consecutive sentences may be appropriate; please refer to the Offences Taken Into Consideration and Totality Definitive Guideline. Where multiple offences are committed in circumstances which justify consecutive sentences, and the total amount stolen is in excess of £1 million, then an aggregate sentence in excess of 7 years may be appropriate.

Where the offender is dependent on or has a propensity to misuse drugs or alcohol and there is sufficient prospect of success, a community order with a drug rehabilitation requirement under section 209, or an alcohol treatment requirement under section 212 of the Criminal Justice Act 2003 may be a proper alternative to a short or moderate custodial sentence.

Where the offender suffers from a medical condition that is susceptible to treatment but does not warrant detention under a hospital order, a community order with a mental health treatment requirement under section 207 of the Criminal Justice Act 2003 may be a proper alternative to a short or moderate custodial sentence.

- Deleted: Consecutive sentences for multiple offences may be appropriate- please refer to the Offences Taken Into Consideration and Totality Definitive Guideline.¶

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

Factors increasing seriousness

Statutory aggravating factors:

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

Other aggravating factors:

- Stealing goods to order
- Offence motivated by, or demonstrating hostility based on characteristics of the victim including, but not limited to, race, age, sex or disability
- Steps taken to prevent the victim reporting or obtaining assistance and/or from assisting or supporting the prosecution
- Offender motivated by intention to cause harm or out of revenge
- Attempts to conceal/dispose of evidence
- Failure to comply with current court orders
- Offence committed on licence
- Offences taken into consideration
- Blame wrongly placed on others
- Established evidence of community/wider impact (for issues other than prevalence)

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Remorse, particularly where evidenced by voluntary reparation to the victim
- 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
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives
- Determination and/or demonstration of steps having been taken to address addiction or offending behaviour

Prevalence

There may be exceptional local circumstances that arise which may lead a court to decide that prevalence should influence sentencing levels. The pivotal issue in such cases will be the harm caused to the community.

It is essential that the court before taking account of prevalence:

- has supporting evidence from an external source, for example, Community Impact statements, to justify claims that a particular crime is prevalent in their area, **and** is causing particular harm in that community, **and**
- is satisfied that there is a compelling need to treat the offence more seriously than elsewhere.

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, or a restitution order.

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.

Theft from a shop or stall

Theft Act 1968 (section 1)

Triable either way

Maximum: 7 years' custody

(Except for an offence of low-value shoplifting which is treated as a summary only offence in accordance with section 22A of the Magistrates' Courts Act 1980 where the maximum is 6 months' custody.)

Offence range: Discharge – 3 years' custody

STEP ONE**Determining the offence category**

The court should determine the offence category with reference only to the factors identified in 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 coercion, intimidation or exploitation
- Sophisticated nature of offence/significant planning
- Significant use or threat of force
- Offender subject to a banning order from the relevant store
- Child accompanying offender is actively used to **facilitate** the offence (not merely present when offence is committed)

B - Medium culpability:

- A significant role where offending is part of a group activity
- Some degree of planning involved
- Limited use or threat of force
- All other cases where characteristics for categories A or C are not present

C - Lesser culpability:

- Performed limited function under direction
- Involved through coercion, intimidation or exploitation
- Little or no planning
- Mental disorder/learning disability where linked to commission of the offence

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 assessed by reference to the **financial loss** that results from the theft **and any significant additional harm** suffered by the victim or others – examples of additional harm may include but are not limited to: emotional distress, damage to property, effect on business, a greater impact on the victim due to the size of their business, or a particularly vulnerable victim.

Intended loss should be used where actual loss has been prevented.

HARM

Category 1	High value goods stolen (above £1,000) or Medium value with significant additional harm to the victim or others
Category 2	Medium value goods stolen (£200 to £1,000) and no significant additional harm or Low value with significant additional harm to the victim or others
Category 3	Low value goods stolen (up to £200) and Little or no significant additional harm to the victim or others

STEP TWO			
Starting point and category range			
Having determined the category at step one, the court should use the starting point to reach a sentence within the appropriate category range in the table below.			
The starting point applies to all offenders irrespective of plea or previous convictions.			
Harm	Culpability		
	A	B	C
Category 1 Where the value greatly exceeds £1,000 it may be appropriate to move outside the identified range. Adjustment should be made for any significant additional harm where high value goods are stolen	Starting point 26 weeks' custody Category range 12 weeks' - 3 years' custody	Starting point Medium level community order Category range Low level community order – 12 weeks' custody	Starting point Band C fine Category range Band B fine - Low level community order
Category 2	Starting point 12 weeks' custody Category range High level community order - 26 weeks' custody	Starting point Low level community order Category range Band C fine – Medium level community order	Starting point Band B fine Category range Band A fine – Band C fine
Category 3	Starting point High level community order Category range Low level community order-12 weeks' custody	Starting point Band C fine Category range Band B fine - Low level community order	Starting point Band A fine Category range Discharge –Band B fine

Consecutive sentences for multiple offences may be appropriate - please refer to the Offences Taken Into Consideration and Totality Definitive Guideline.

Previous diversionary work with an offender does not preclude the court from considering this type of sentencing option again if appropriate.

Where the offender is dependent on or has a propensity to misuse drugs or alcohol and there is sufficient prospect of success, a community order with a drug rehabilitation requirement under section 209, or an alcohol treatment requirement under section 212 of the Criminal Justice Act 2003 may be a proper alternative to a short or moderate custodial sentence.

Where the offender suffers from a medical condition that is susceptible to treatment but does not warrant detention under a hospital order, a community order with a mental health treatment requirement under section 207 of the Criminal Justice Act 2003 may be a proper alternative to a short or moderate custodial sentence.

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

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction.
- [Relevant recent convictions may justify an upward adjustment, including outside the category range. In cases involving significant persistent offending, the community and custodial thresholds may be crossed even though the offence may otherwise warrant a lesser sentence;](#)
- [Any custodial sentence should be for the shortest possible term](#)
- Offence committed whilst on bail

Other aggravating factors:

- Stealing goods to order
- Offence motivated by, or demonstrating hostility based on, characteristics of the victim including, but not limited to, race, age, sex or disability
- Steps taken to prevent the victim reporting or obtaining assistance and/or from assisting or supporting the prosecution
- Attempts to conceal/dispose of evidence
- Offender motivated by intention to seek revenge
- Failure to comply with current court orders
- Offence committed on licence
- Offences taken into consideration
- Established evidence of community/wider impact
- Prevalence - see below

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Remorse, particularly where evidenced by voluntary reparation to the victim
- 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
- Mental disorder or learning disability (where not linked to the commission of the offence)
- Sole or primary carer for dependent relatives
- Determination and/or demonstration of steps having been taken to address addiction or offending behaviour
- Offender experiencing **exceptional** financial hardship

Prevalence

There may be exceptional local circumstances that arise which may lead a court to decide that prevalence should influence sentencing levels. The pivotal issue in such cases will be the harm caused to the community.

It is essential that the court before taking account of prevalence:

- has supporting evidence from an external source, for example, Community Impact statements, to justify claims that a particular crime is prevalent in their area, **and** is causing particular harm in that community, **and**
- is satisfied that there is a compelling need to treat the offence more seriously than elsewhere.

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, or a restitution order.

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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Going equipped for theft or burglary

Theft Act 1968 (section 25)

Triable either way

Maximum: 3 years' custody

Offence range: Discharge - 18 months' custody

STEP ONE
Determining the offence category

The court should determine the offence category with reference **only** to the factors identified in 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 coercion, intimidation or exploitation
- Significant steps taken to conceal identity and/or avoid detection
- Sophisticated nature of offence/significant planning
- Offender equipped for robbery or domestic burglary

B - Medium culpability:

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

C - Lesser culpability:

- Involved through coercion, intimidation or exploitation
- Limited awareness or understanding of offence
- Little or no planning

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.

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HARM

This guideline refers to preparatory offences where no theft 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 item(s) were used to commit a substantive offence.

Greater harm:

Possession of item(s) which have the potential to facilitate an offence affecting a large number of victims

Possession of item(s) which have the potential to facilitate an offence involving high value items

Lesser harm

All other cases.

STEP TWO

Starting point and category range

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

Harm	Culpability		
	A	B	C
Greater	Starting point 1 years' custody	Starting point 18 weeks' custody	Starting point Medium level community order
	Category range 26 weeks' -1 year 6 months custody	Category range High level community order – 36 weeks custody	Category range Low level community order – High level community order
Lesser	Starting point 26 weeks' custody	Starting point High level community order	Starting point Band C fine
	Category range 12 weeks custody- 36 weeks custody	Category range Medium level community order – 12 weeks custody	Category range Discharge – Medium level community order

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Consecutive sentences for multiple offences may be appropriate - please refer to the Offences Taken Into Consideration and Totality Definitive Guideline.

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

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

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- 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
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives
- Determination and/or demonstration of steps having been taken to address addiction or offending behaviour

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, such as a deprivation order.

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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Abstracting electricity

Theft Act 1968 (section 13)

Triable either way

Maximum: 5 years' custody

Offence range: Discharge -1 year's custody

STEP ONE
Determining the offence category

The court should determine the offence category with reference **only** to the factors identified in 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 coercion, intimidation or exploitation
- Sophisticated nature of offence/significant planning
- Abuse of position of power or trust or responsibility
- Commission of offence in association with or to further criminal activity

B : Medium culpability:

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

C - Lesser culpability:

- Performed limited function under direction
- Involved through coercion, intimidation or exploitation
- Limited awareness or understanding of offence

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

The level of harm is assessed by weighing up all the factors of the case to determine the level of harm caused.

Greater harm:

A significant risk of, or actual injury to persons or damage to property.

Significant volume of electricity extracted as evidenced by length of time of offending and/or advanced type of illegal process used.

Lesser harm:

All other cases.

STEP TWO**Starting point and category range**

Having determined the category at step one, the court should use the starting point to reach a sentence within the appropriate category range in the table below.

The starting point applies to all offenders irrespective of plea or previous convictions.

Harm	Culpability		
	A	B	C
Greater	<p>Starting point 12 weeks' custody</p> <p>Category range High level community order- 1 year's custody</p>	<p>Starting point Medium level community order</p> <p>Category range Low level community order – 12 weeks' custody</p>	<p>Starting point Band C fine</p> <p>Category range Band B fine –Low level community order</p>
Lesser	<p>Starting point High level community order</p> <p>Category range Medium level community order- 12 weeks' custody</p>	<p>Starting point Low level community order</p> <p>Category range Band C fine – Medium level community order</p>	<p>Starting point Band A fine</p> <p>Category range Discharge –Band C fine</p>

The court should then consider further adjustment for any aggravating or mitigating factors. 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.

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:

- Electricity extracted from another person's property
- Attempts to conceal/dispose of evidence
- Failure to comply with current court orders
- Offence committed on licence
- Offences taken into consideration
- Blame wrongly placed on others
- Established evidence of community/wider impact

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- 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
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives
- Determination and/or demonstration of steps having been taken to address addiction or offending behaviour

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, or a restitution order.

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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Annex F

Making off without payment

Theft Act 1978 (section 3)

Triable either way

Maximum: 2 years' custody

Offence range: Discharge- 9 months' custody

STEP ONE**Determining the offence category**

The court should determine the offence category with reference **only** to the factors identified in 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 coercion, intimidation or exploitation
- Sophisticated nature of offence/significant planning
- Offence involving intimidation or the use or threat of force
- Deliberately targeting victim on basis of vulnerability

B - Medium culpability:

- A significant role where offending is part of a group activity
- All other cases where characteristics for categories A or C are not present
- Some degree of planning involved

C - Lesser culpability:

- Performed limited function under direction
- Involved through coercion, intimidation or exploitation
- Little or no planning
- Limited awareness or understanding of offence

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 assessed by reference to the **actual loss** that results from the offence **and any significant additional harm** suffered by the victim or others – examples of additional harm may include **but are not limited to**: a high level of inconvenience caused to the victim, emotional distress, fear/loss of confidence caused by crime, a greater impact on the victim due to the size or type of their business.

HARM

Category 1	Goods or services obtained above £200 or goods/services up to £200 with significant additional harm to the victim or others
Category 2	Goods or services obtained up to £200 and Little or no significant additional harm to the victim or others

STEP TWO

Starting point and category range

Having determined the category at step one, the court should use the starting point to reach a sentence within the appropriate category range in the table below.

The starting point applies to all offenders irrespective of plea or previous convictions.

Harm	Culpability		
	A	B	C
Category 1 Where the value greatly exceeds £200, it may be appropriate to move outside the identified range. Adjustment should be made for any significant additional harm for offences above £200	Starting point 12 weeks custody Category range High level community order -9 months custody	Starting point Low level community order Category range Band C fine -High level community order	Starting point Band B fine Category range Band A fine- Low level community order
Category 2	Starting Point Medium level community order Category range Low level community order-12 weeks custody	Starting Point Band C fine Category range Band B fine – Low level community order	Starting Point Band A fine Category range Discharge –Band B fine

Consecutive sentences for multiple offences may be appropriate – please refer to the Offences Taken Into Consideration and Totality Definitive Guideline.

The court should then consider further adjustment for any aggravating or mitigating factors. The following list is a **non exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender.

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

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
- Failure to comply with current orders
- Offence committed on licence
- Offences taken into consideration
- Established evidence of community/wider impact

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Remorse, particularly where evidenced by voluntary reparation to the victim
- 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
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives
- Determination and/or demonstration of steps having been taken to address addiction or offending behaviour

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, or a restitution order.

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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ANNEX G

PROPOSED STRUCTURE OF RESPONSE TO CONSULTATION ON THEFT OFFENCES

FOREWORD

To be agreed with Chairman

INTRODUCTION

Outline of why a new definitive theft guideline is being produced, to: provide updated guidance for a very high volume offence within one document; the existing theft SGC guideline contains the out of date burglary guideline; and to provide guidance for offences for which currently no guidance exists such as bike/car theft.

- Scope of offences/what is covered by the offences and rationale for groupings
- Applicability of guidelines
- Research
- How consultation was run (online/hardcopy/events)

SUMMARY OF RESPONSES

- Who responded and how
- General themes – e.g. positive responses to the proposed increased focus on the additional impact of thefts on victims other than just the financial value of the item
- A revised approach to the assessment of harm through the guidelines (merging of harm A and B) in order to make the process simpler, in light of concerns raised that the process was too complex
- Rewording of some of the culpability factors across the guidelines which responses showed had caused confusion
- Responses to key questions for each guideline, on culpability, harm, step two factors, sentence levels
- Rationale of approach taken to definitive guideline i.e. where position maintained despite requests for the proposals to be re considered (e.g prevalence wording)
- and where proposals suggested during the consultation were adopted (e.g additional wording now included regarding alcohol and mental health treatment orders)
- Explanation for the new placement of, and revised wording, regarding previous convictions within shop theft, and the removal of the wording within the rest of the guidelines from the consultation version
- A focus on avoiding escalation in sentencing, explanation regarding the new wording in shop theft to remind courts that all sentencing options are open, even if previous diversionary work with offenders before court had already been undertaken.

ANNEX A

Summary of consultation questions

ANNEX B

List of respondents

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Sentencing Council

Sentencing Council meeting: 17 July 2015
Paper number: SC(15)JULY06 – Guilty Pleas
Lead Council members: Alison Saunders, Michael Caplan, Julian Roberts and Tim Holroyde
Lead official(s): Ruth Pope
0207 071 5781

1 ISSUE

1.1 At the meeting in May 2015, the Council decided to delay the consultation on the proposed guilty plea guideline due to concerns about the resource impact of the guideline. The Council agreed that further work should be done to understand the likely impact of the proposed guideline both in terms of the impact on correctional resources and the wider system costs and savings associated with the guideline.

1.2 It was agreed that the Ministry of Justice would coordinate work on the wider system analysis and would report back to the Council in July.

1.3 The OSC were tasked with re-running the resource assessment model using data from the 2014 CCSS to see if trends noted previously of offenders pleading earlier were continued, which would mitigate the effect of the guideline. The model was also to be run substituting a reduction of one quarter for the proposed reduction of one-fifth to see the extent to which this aspect of the guideline was contributing to the resource impact.

1.4 Concerns were voiced by Council members about the negative impact on the police and CPS of not going ahead with the consultation and ultimately with the implementation of the guideline.

2 RECOMMENDATION

2.1 Given the complexity of the necessary work, it is recommended that the Council notes that this work will continue over the summer with the results being presented to the Council at the September meeting.

2.2 That the Council should confirm that the scope of the work being undertaken meets their requirements and will enable a decision to be made at the September meeting as to whether the consultation can go ahead.

3 CONSIDERATION

The whole system analysis

3.1 Stephen Muers will provide the Council with a progress report on the work being undertaken by MOJ which will enable the Council to have a clearer understanding of the impact of the guideline and linked initiatives on the criminal justice system in order that the wider resource implications of proceeding or not proceeding with the guideline can be assessed. The results of this work will not be available at the July meeting due to the complexity of assessing these impacts, although work is already underway.

The guideline resource assessment

3.2 The model that was used to produce the resource assessment presented at the May meeting cannot be adapted satisfactorily to carry out the additional analysis required by the Council. Unfortunately, due to staff turnover, there are no members of staff (either in the OSC or Analytical Services at MoJ) who are sufficiently experienced with the software used to produce the model to adapt it as required. A decision has therefore been made to build a new model.

3.3 The OSC has been without an analyst to conduct this work from January to July 2015. In addition, there has been a delay in obtaining access to the MoJ data that will allow us to update current figures. At the time of writing, therefore, we are unable to say whether there has been any change in offender behaviour in terms of rates and timings of guilty pleas. However, the new post holder, Liz Whiting, joined the office on 6 July 2015 and MoJ Analytical Services have agreed to provide some assistance with building the model during July and August. We therefore hope to be able to provide some basic information on this at the meeting.

3.4 The wider work on the model, conducted after the July Council meeting, will be designed to provide the following (where feasible):

- a range of estimates of the correctional resource costs/savings attributable to the proposed guideline based on different assumptions of offender behaviour;

- a breakdown of the estimates by summary, either way and indictable only offences;
- a subset of estimates for different offence types (eg sexual offences, violent offences etc);
- an estimate of the impact on a year by year basis;
- sufficient flexibility to provide a facility to estimate the impact of the guideline if certain features are altered (eg increasing or decreasing the level of reduction available at certain stages); and
- an estimate of how the wider system costs and benefits would be affected by variations to the model (based on the outcomes of analysis conducted by the MoJ analysts).

3.5 While every attempt will be made to make the model as robust as possible, the Council should be in no doubt that any results will still be subject to a very large margin of error. There are a number of areas of uncertainty that contribute to this:

- the data regarding current practice is taken from the CCSS, and any inaccuracies or inconsistencies in the way that information is recorded or interpreted will affect the reliability of the model;
- CCSS data does not cover magistrates' courts and does not cover every case in the Crown Court (national response rate for the CCSS in 2014 was 64 percent) and therefore we will have to extrapolate from the data we have to cover these gaps;
- the model will assume that sentencers will follow the proposed guideline (research carried out in March 2015 confirmed that sentencers had no difficulty in understanding and following the guideline), but if sentencers do not apply the guideline correctly or if they subvert the guideline for example by choosing a lower starting point to achieve a desired outcome, the model will not reflect this;
- the model will assume mathematically correct levels of reduction, but in practice sentences are likely to be rounded (usually down) to the nearest month. This means that the distinction between the one quarter reduction currently used and the proposed one-fifth reduction may not be as significant in practice as it is in the model (particularly for shorter sentences);

- the behaviour of offenders and their advisers is extremely difficult to predict. The model will produce a range of results based on different estimates of offender behaviour but these will be no more than estimates;
- the model will not take into account any future changes in legislation or in the types of offences being committed or prosecuted; and
- the model will not be able to account for the possible effect of the Criminal Courts Charge on rates and timings of plea – there is a suggestion that some offenders may be incentivised to plead to avoid the higher charges, but the data we will be using pre-dates the implementation of the charge and so we have no evidence relating to this.

Timetable

3.6 The progress and timetable for developing the model is as follows:

- June: Cross CJS meeting held with officials from MoJ, police, CPS and Sentencing Council to discuss the issues, the scope of the model and the division of responsibilities;
- June: liaising with the Sentencing Analysis Team at MoJ and securing resource to help take the project forward;
- Early July: discussions with MoJ Analytical services to initiate the building of the new model, analysis of 2014 CCSS data to identify trends in timings and rates of pleas compared to 2013 data;
- Mid July: begin building the model in conjunction with analysts from MoJ;
- Late July – early August: agree assumptions to be used in the model with the guilty plea sub-group (or their nominees);
- mid August: start running the model;
- mid August – mid September: test and refine the model;
- September Council meeting: present results from the model.

The position of the police and CPS

3.7 Chris Eyre and Peter Lewis will be attending the Council meeting in place of Lynne Owens and Alison Saunders, and will be able to explain how delays to the implementation of the proposed guilty plea guideline would have a negative impact on police and prosecutors.

Question 1: Is the Council content with the scope of the model as set out at 3.4 above bearing in mind the caveats set out at 3.5 above?

Question 2: Bearing in mind the limitations set out at 3.5 above, is the Council satisfied that it will have the information it needs to make a decision on the future of the guilty plea guideline at its September meeting?

Question 3: Is the Council content with the timetable at 3.6 above?

Question 4: Are members of the subgroup able to assist with agreeing the assumptions to be used?

4 IMPACT

4.1 The guilty plea guideline will affect about 90 per cent of criminal cases and so even any small impact on individual cases has the potential to have a very significant effect on the system overall.

4.2 As will be apparent from this paper, even with the additional work planned over the next two months, the precise impact of the guilty plea guideline cannot be known.

4.3 The concerns raised at the May meeting regarding the resource impact of the proposed guideline related to the central estimate that the guideline could result in a requirement for 2,700 additional prison places per year at an annual cost of £80 million. There was a discussion as to whether the cost would be mitigated by savings elsewhere in the criminal justice system, hence the work referred to at 3.1 above. However, the Council should be aware that even if there are equivalent financial savings elsewhere in the system, a projected increase in prison places of 1,500 or more is still likely to be regarded as unfeasible by MoJ.

5 RISKS

5.1 The Council will be aware that it has a statutory duty to prepare a guideline for reductions for guilty pleas and that the guideline is in its published work plan. There is an expectation from the PQBD's Review, from the SPJ and others, including many judges and magistrates, that a guideline will be consulted on in the near future. Any decision to discontinue or to significantly delay the guideline would have to be very carefully explained to key stakeholders including police, prosecutors, judiciary, and the courts service.

5.2 There are risks to political and public confidence in the Council if it either fails to consult on the guideline, or if it consults on a guideline which it is unable to deliver because of the likely impact. Equally, the Council will want to maintain its independence and avoid any perception that the guideline has been cancelled or radically altered due to outside pressures.

Question 5: Is there any other information that the Council will require at the September meeting to enable it to make a decision about the future of the guideline?

Sentencing Council

Sentencing Council meeting: 17th July 2015
Paper number: SC(15)JUL07 – Health and Safety offences, corporate manslaughter and food safety and hygiene offences
Lead officials: Lisa Frost and Pat Scicluna
0207 071 5784
Lead Council member: Michael Caplan

1 ISSUE

1.1 This paper is the final consideration of responses from the health and safety, corporate manslaughter and food safety and hygiene offences consultation. The Council is required to sign off the definitive guideline today in order to achieve publication of the definitive guideline in November 2015.

1.2 This paper focuses on the final version of the guideline, which includes all amendments made during the last three meetings following the Council's consideration of consultation responses. Other issues for consideration include:

- fines and related issues for all offences within the guideline;
- the final version of the health and safety harm model;
- one further issue regarding scope of the health and safety guidelines (organisations and individuals); and
- a summary of all amendments made to the guideline over the last three meetings.

2 RECOMMENDATION

2.1 That the Council reviews and signs off the definitive guideline at the meeting.

2.2 The Council is asked specifically to:

- agree the rationales provided for the issues relating to fines for the consultation response document;
- agree the finalised harm model for health and safety offences;

- agree not to include Houses of Multiple Occupation (HMO) offences within the scope of the health and safety guideline;
- review the summary of amendments to each guideline and highlight any further areas considered to require amendment; and
- provide any drafting comments on the guidelines or the rationales within this paper which are proposed for inclusion in the consultation response document. These should be sent to;
Lisa.Frost@sentencingcouncil.gsi.gov.uk by close of play Tuesday 14th July.

3 CONSIDERATION

Fines

3.1 As the Council is aware, the most contentious issues within the responses have been the use of turnover to determine an offender's means, and levels of fines. It was agreed at earlier meetings that the Council would consider this issue at the final meeting, to allow time for a full consideration of responses and analysis of fine levels.

3.2 These issues have now been considered, and it is not recommended that changes be effected to the fines within the guideline. The issues raised in responses are set out below, and the Council is asked to consider and agree the rationales it is proposed are included in the consultation response document in relation to these.

Use of Turnover

3.3 As highlighted to the Council in an earlier consideration of responses, a number of respondents criticised the use of turnover to identify an offender's means, stating that it is not an adequate indicator of the financial health of an organisation. One respondent highlighted that a fine based on turnover may attract a very high starting point, and even with the application of steps three and four a fine may result which is disproportionate to the offence and/or the means of the offender. The Council have already stated at earlier meetings that it wishes to maintain turnover as the starting point in assessing an offender's means. It is proposed that the following rationale is provided in the consultation response document to address these concerns;

The Council has chosen to use turnover or equivalent to identify starting points at step two, which is consistent with the approach in the environmental guideline. As stated in the consultation document for the guideline, the Council considered turnover to be a clear financial indicator that can be readily identified by sentencers in accounts or annual reports, and that it is less susceptible to manipulation than other accounting measures. To address concerns that turnover may not always be an accurate indicator of the financial health of an organisation, the Council has ensured that the guideline includes adequate flexibility and guidance (at steps three and four) to allow the court to tailor the sentence to the individual circumstances of the organisation concerned. This was recognised by a number of respondents, one being the Justice Select Committee (JSC) which held a stakeholder inclusive seminar in relation to the guideline during the consultation period. The JSC response stated;

“A number of the stakeholders at our seminar expressed concerns that the use of turnover to categorise businesses in order to determine an appropriate fine was overly simplistic. We accept that using turnover to determine the size of a business is something of a blunt instrument but we believe the overall sentencing process in the proposed guideline gives sentencers the flexibility they need to ensure the interests of justice are served. Step two of the sentencing process states that sentencers must consider financial information on a company as well as turnover. Step four then requires sentencers to ‘consider other factors that may warrant adjustment of the proposed fine’. We believe that this process, and step four in particular, will give sentencers the flexibility they need to determine appropriate financial punishment for defendant organisations”.

*The Council would add to this that step three requires the court to ‘**check whether the proposed fine based on turnover is proportionate to the overall means of the offender**’. Taking into account consultation responses, the Council decided to include the word ‘**overall**’ before the words ‘means of the offender’ within the explanation of the purpose of this step, to ensure a consideration of all relevant financial information.*

The Council is satisfied that the flexibility built into the guideline does address any concerns regarding the use of turnover to identify a fines starting point, and will provide for a robust and full assessment of an organisation’s finances.

Question 1: Does the Council agree with the rationale to be provided in the consultation response document regarding the use of turnover to identify the starting point of a fine?

Levels of Fines

3.4 There have been two main criticisms in relation to fine levels. These are;

- i) The disproportionate effect of fines on micro organisations in terms of percentage of turnover represented by fines.
- ii) The increased fines for large organisations.

Disproportionate effect of fines on micro organisations

3.5 A number of consultation responses raised the disproportionate effect of fines on micro organisations when compared to organisations with higher turnovers. Statisticians have provided an illustration of the percentage of an organisation's turnover represented by the starting point of fines, which is included at **Annex A**. The Council will note that fine levels for micro organisations for both health and safety and food safety offences represent a greater proportion of their turnover in percentage terms than for large organisations. Page 1 of **Annex A** describes where this effect is most prominent.

3.6 In order to address this and achieve parity in percentage of turnover represented by fines, a downward revision of fines would be required at the lower end of the table. The Council considered this briefly at an earlier meeting, and concluded that due to the very low fines for low culpability offences this would not be possible while still ensuring fines achieve a deterrent and punitive effect. A further reason for the apparent disproportionate impact of fine levels is that the Council decided to maintain the principle within the SGC guideline that 'where the offence is shown to have caused death, the appropriate fine will seldom be less than £100,000'. This is reflected in the starting points for all but low culpability categories for micro and small organisations.

3.7 It is suggested that the consultation response document recognises the responses that have highlighted the disproportionate effect of fines, and provides the following rationale;

'The Council recognises that the effect of fines for smaller organisations appears disproportionate in terms of percentage of turnover than for larger organisations. This is due to the Council's decision to maintain the principle within the SGC guideline that a fine should not be lower than £100,000 in most cases where an offence results in the loss of life or very serious injury, and to ensure that fines for all offences have a sufficiently punitive and deterrent effect. While the starting points represent a higher percentage of the turnover of micro and small organisations compared to medium and large organisations, it is important to note that steps three and four of the

guideline require the court to step back and review, and if necessary adjust, the initial fine imposed based on turnover. This enables a full assessment of whether the fine is proportionate to the overall means of the offender, and consideration of other factors which may warrant adjustment of the proposed fine. The court may adjust the fine upwards or downwards, including outside of the range, where it may be appropriate to do so.'

Question 2: Does the Council agree with the rationale to be provided for the disproportionate effect of fines on micro and small organisations?

Increased fines for large organisations

3.8 As the Council is aware, the most contentious issue raised in consultation responses was the increase in fine levels for large organisations for offences covered by the guideline. This issue was particularly prominent in responses from representatives of industry, including legal firms.

3.9 Officials held a meeting with the Confederation of British Industry (CBI) during the consultation period to discuss the proposed guidelines, and we understand that they also contacted the previous Secretary of State to raise their objections to the increased fine levels for larger organisations. Their objections, and the objections of many other respondents, are specifically that turnover is not a good indication of the financial health of an organisation; that levels of fines are not proportionate to the seriousness of offences; and that the increases in fines are not necessary to act as a deterrent to offending, which they submit is evidenced by the low volumes of these offences.

3.10 The Council took the principled decision during the development of the guidelines that fines for these offences needed to be much higher for larger organisations with greater means to achieve the aims of sentencing. The recent decision of the Court of Appeal in the Thames Water case¹ supports this position, and it is not anticipated that the Council will wish to review this decision. As evidenced at **Annex A** and referred to above, the proportionate effect of fines can actually be demonstrated to be considerably lower in percentage terms for large organisations. One option to address this criticism of increased fines for larger organisations is to highlight the effect of fine levels on micro and small organisations which is outlined above. However, while this would address this criticism to some extent, this could increase the perception that the guidelines have a greater punitive effect on smaller organisations with lower means. Further, the response document

¹ R v Thames Water Utilities Ltd [2015] EWCA Crim 960

will need to highlight that this effect is only apparent when a calculation is applied to the level of turnover of an organisation, which the Council will be keen to stress is not the only financial factor to be considered.

It is proposed that the following rationale for increased fines be included within the response document;

'85% of respondents who answered this question endorsed the approach to fines within the guidelines, and agreed that any fine imposed should be sufficiently substantial to have a real economic impact on offenders. The minority of 15% who disagreed raised concerns regarding the increase in fines for larger organisations which result from the new guidelines.

As was set out in the consultation document, one of the reasons for the Council's decision to produce updated guidance for offences captured by the SGC guidance published in 2010 was that sentences imposed on offenders in corporate manslaughter and health and safety cases causing death, particularly fines imposed on larger organisations, were not fulfilling the purposes of sentencing in this area. The Council considered Section 164 of the Criminal Justice Act 2003, which requires that any fine imposed must reflect the seriousness of the offence and take into account the financial circumstances of the offender. The Council also considered a number of recent developments, including a Court of Appeal case where the importance of identifying a level of fine that achieves the aim of sentencing given the financial circumstances of the offender in question was reiterated.²

At this point it is important to note that the position under the previous SGC guidelines, which stated that it was expected that an offence of corporate manslaughter would attract a fine between £500,000 and millions of pounds, and for health and safety offences resulting in a death the appropriate fine would seldom be less than £100,000, and may be measured in hundreds of thousands of pounds or more. The SGC guideline also noted the requirements of Section 164 of the Criminal Justice Act and noted 'it is just that a wealthy defendant should pay a larger fine than a poor one'.

Although this was set out in the previous guidance, a review of sentencing practice concluded that this was not necessarily reflected in sentences being imposed. In particular, some inconsistency in how factors were weighted and applied, and whether fines were proportionate to the seriousness of the offence given the means of the offender were identified.³

² R v Sellafield and Network Rail [2014] EWCA Crim 49

³ Specific examples of the variation in sentences were set out at page 30 of the consultation document.

While the Council recognises that higher fines will not be popular with those who may have to pay them, it regards the application of these established principles as fundamental in sentencing for these offences.

It is also important to note that for less serious offences than those resulting in death or very serious harm to individuals, the Council anticipates there will be little change from current sentencing practice. The Council will consider how best to explore the impact of the guidelines following their introduction.

Question 3: Does the Council agree with the rationale to be provided for the increased fines for large organisations? Does the Council think additional wording within this section of the response should be included to refer to the percentage of turnover represented by fines actually being higher for micro and small organisations?

The Corporate Veil

3.11 Step Two of the guidelines for organisations provide that:

Normally, only information relating to the organisation before the court will be relevant, unless exceptionally it is demonstrated to the court that the resources of a linked organisation are available and can properly be taken into account.

This was challenged in responses from a small number of legal firms who perceived this as being an “erosion of the legal principle of the corporate veil.” The wording of this consideration does make it clear that this will only be applicable in exceptional circumstances, and is qualified by the inclusion of where this information ‘can properly be taken into account’. This can be highlighted in the consultation response, and we would suggest the wording below:

‘The wording in the guideline is merely a restatement of the legal position as it stands, and should not be interpreted as either extending or restricting the circumstances when the resources of a linked organisation can be taken into account.’

Question 4: Does the Council agree that this wording adequately addresses submissions regarding the validity of the resources of linked organisations being taken into account?

Health and Safety

Harm Model

3.12 At the Council's meeting in June further discussion took place regarding the health and safety harm model. Following consideration of the practical application of the model by Council members, a number of further revisions were felt necessary to the structure of the guideline to clarify the complex assessment required to establish the level of harm. Officials worked with the Council lead for the guideline, Michael Caplan, to further refine the model, which is attached at **Annex B** for the Council's consideration.

Question 5: Does the Council agree that the harm model now provides sufficient clarity for sentencers of how to conduct the assessment of harm?

Scope

3.13 A number of respondents, including the Cabinet Office, and a member of a Local Authority, suggested that offences involving Houses of Multiple Occupation (HMOs) ought to be included within the scope of the health and safety guidelines. The offences concerned are legislated for by the Housing Act 2004, and are listed below;

- Fail to comply with a housing improvement notice (s.30)
- Fail to comply with a housing prohibition order (s.32)
- Licence holder / person restricted by licence of multi occupation house fail to comply with licence conditions (s.72(3) & (7))
- Fail to comply with a housing management order (s.131)
- Disclose document / information contained in a home condition report (s.165)
- Obstruct officer of a housing enforcement authority (s.167)
- Fail to comply with regulations in respect of management of housing in multiple occupation (s.234)
- Aid / abet a failure to comply with regulations in respect of management of housing in multiple occupation (s.234)
- Fail to comply with the requirements of a housing notice under section 235 (s.236(1) & (3))
- Knowingly supply false / misleading information to a housing authority (s.238(1) & (3))
- Knowingly supply false / misleading information to another knowing it will be given to a housing authority (s.238(2) & (3))

[In 2013, 220 adult offenders were sentenced for these offences.⁴ All offenders were sentenced in magistrates' courts, and the majority of offenders (95 per cent) received a fine.]

⁴ A breakdown of convictions per offence is not available.

Other offences under the Act include;

- Controller / manager of house in multiple occupation act without a section 6(1) licence (72(1) & (6))
- Controller / manager of licensed multi occupation house knowingly permit unlicensed occupation (72(2) & (6))
- Controller / manager of residential accommodation required to be licensed under Part 3 of the Act (95(1) & (5))
- Licence holder / person fail to comply restriction of s. 90(6) licence condition (95(2) & (6))

[In 2013, approximately 140 adult offenders were sentenced for these offences⁵ and the majority (96 per cent) were sentenced in magistrates' courts. The most common sentence outcome for these offences is a fine. In 2013 fines comprised 93 per cent of all sentence outcomes.]

3.14 It is not recommended that these offences are included within the guideline for a number of reasons. Firstly, the offences are summary only, so the statutory maxima differ from other offences covered by the guideline. Officials have considered whether these offences could be included in an annex as analogous offences, but have concluded that this would not be possible due to a lack of similarity with culpability and harm factors for food hygiene offences, and the focus on risk in assessing harm for health and safety offences. Secondly, the offences were not included in the consultation, and opportunities to highlight problems or observations regarding their inclusion have not been possible. Thirdly, while these offences have increased over recent years, the low volumes of these offences would not warrant a revision of the guideline to attempt to accommodate them.

3.15 It is possible that as offences relating to HMOs are summary only, they could be considered for inclusion within a future revision of the MCSG guideline. This would respond to concerns regarding a lack of guidance for these offences.

Question 6: Does the Council agree that offences relating to HMOs should not be included within the scope of the guideline?

⁵ As footnote 4.

Summary of amendments

A summary of amendments made to the guideline following consideration of consultation responses are provided below. Amended sections are highlighted within the final version of the guideline at Annexes C to G for ease of reference.

The Council are asked to review and agree all amendments.

Health & Safety Organisations guideline (Annex C)

Culpability

- All references to 'systemic' removed or revised to ensure application to non systemic situations (to provide consistency with food offences guideline).
- Low culpability factor; 'prior event' removed.

Harm

- Harm model structure and wording revisions.
- Remote likelihood changed to 'Low'.
- Word significant removed from consideration of number of people harmed.
- Contributory negligence wording amended from 'way that should be anticipated' to 'reasonably foreseeable', and 'highly unlikely' changed to 'unlikely'. Also added 'for sentencing purposes' to qualify application of this consideration.

Step Two

- Aggravating factor of 'targeting vulnerable victims' added.

Step Three

- Overall added to description of step to clarify full consideration required of steps 3 and 4.
- Review of the fine – wording added to confirm court may draw on information from prosecutors re costs of operating within the law.

Step Four

- Paragraphs reversed to clarify consideration of wider impacts not limited to public or charitable bodies.

Step 7

- Reference to costs included to clarify 'where the offender does not have sufficient means to pay the total financial penalty considered appropriate by the court, compensation and fine take priority over costs'.

Health & Safety Individuals guideline: (Annex D)

Culpability

- Headings changed from Deliberate/Reckless/Negligent to Very High/High/Medium and Low.
- Low culpability factor; 'prior event' removed.

Harm

- Harm model amended; structure and wording.
- Remote likelihood changed to 'Low'.
- Word significant removed from consideration of number of people harmed.
- Contributory negligence wording amended from 'way that should be anticipated' to 'reasonably foreseeable', and 'highly unlikely' changed to 'unlikely'. Also added 'for sentencing purposes' to qualify application of this consideration.

Step Two

- Aggravating factor of 'targeting vulnerable victims' added.

Step Three

- Review of the fine – wording added to confirm court may draw on information from prosecutors re costs of operating within the law.

Step 6

- Reference to costs included at Step 6 'where the offender does not have sufficient means to pay the total financial penalty considered appropriate by the court, compensation and fine take priority over costs.'

Corporate Manslaughter: (Annex E)

Only three amendments were made to the Corporate Manslaughter guideline;

- Removal of the words 'more serious offences' from offence category A at Step Two.
- Overall added to description of step to clarify full consideration required of steps 3 and 4.
- Reference to costs included at Step 7 'where the offender does not have sufficient means to pay the total financial penalty considered appropriate by the court, compensation and fine take priority over costs.'

Food Hygiene Organisations guideline: (Annex F)

Culpability

- Reference to regulator included at high culpability factor re ignoring concerns
- All references to systemic removed or revised to ensure application to non systemic situations.
- Low culpability factor; 'prior event' removed.

Harm

- Included risk of harm within all categories of harm.
- Reference to 'human health' replaced by individual(s) and harm to vulnerable groups included in highest category.
- Additional factor included re harm caused to religious or personal beliefs.

Step Two

- Mitigating factors of 'business closed voluntarily' and 'effective food hygiene procedures in place' removed.

Steps Three and Four

- Overall added to description of step to clarify full consideration required of steps 3 and 4.
- Added reference to totality consideration at Step 8 due to likelihood of multiple offences.

Step 7

- Reference to costs included to clarify 'where the offender does not have sufficient means to pay the total financial penalty considered appropriate by the court, compensation and fine take priority over costs'.

Food Hygiene Individuals guideline:

(Annex G)

Culpability

- Headings changed from Deliberate/Reckless/Negligent to Very High/High/Medium and Low.
- Reference to 'systemic' failures removed to ensure application to non systemic situations.
- Low culpability factor; 'prior event' removed.

Harm

- Included risk of harm within all categories of harm.
- Reference to 'human health' replaced by 'individual' and harm to vulnerable groups included in highest category.
- Additional factor included re harm caused to religious or personal beliefs.

Step Two

- Mitigating factors of 'business closed voluntarily' and 'effective food hygiene procedures in place' removed.

Steps Three

- Added reference to totality consideration at Step 8 due to likelihood of multiple offences.

Step Six

- Reference to costs included to clarify 'where the offender does not have sufficient means to pay the total financial penalty considered appropriate by the court, compensation and fine take priority over costs'.

4 IMPACT

4.1 The guideline is likely to increase the level of fines significantly for large organisations, which has attracted criticism from businesses and industry representatives.

5 RISK

5.1 Due to the criticism of increased fines within the guideline during the consultation period, this issue is highly likely to attract negative attention upon publication of the definitive guideline. It will be very important to ensure that the consultation response document provides clear, robust rationales for these elements of the guideline. For this reason the Council is asked to carefully consider the proposed rationales for these most contentious areas, which are included in this paper. Our communications strategy will seek to address any negative responses from sectors of industry to mitigate this risk.

5.2 Due to the complexity of the guideline and the assessments it requires, there is a risk that sentencers may struggle to apply it in practice, which could affect consistency of sentencing for these offences. Officials intend to commence discussions with Judicial College regarding the development of training materials for using the guideline to mitigate this risk.

5.3 No impact upon prison or probation resources is anticipated as a result of the guideline.

Health and safety and food safety and hygiene offences

The starting points proposed in the draft health and safety and food safety and hygiene guidelines have been compared for organisations of different sizes. The starting points have also been compared with those in the environmental offences definitive guideline. In summary, the results show:

- For both health and safety and food safety and hygiene offences, the starting point as a proportion of turnover for micro organisations was between 2 and 3 times higher than that for large organisations, for categories 2 to 4, where the culpability was very high, high or medium. This is broadly similar to the corresponding proportions for environmental offences.
- Where the culpability was low, the starting point as a proportion of turnover for environmental and food safety and hygiene offences was between 1 and 3 times higher for micro organisations compared to large organisations.
- For health and safety offences with category 1 harm, however, the starting point as a proportion of turnover for micro organisations compared to large organisations was over 3 times higher for very high and high culpability, 4 times higher for medium culpability, and 5 times higher for low culpability (see cells highlighted red in table 1).
- For example, for micro organisations in the health and safety guideline, the starting point for low culpability, category 1 harm was £30,000. This is 2 per cent of the maximum turnover of £2m for these organisations. The corresponding starting point for large organisations was £300,000. This is only about 0.3 per cent of the £100m turnover. This means that the proportion for micro organisations is 5 times that for large organisations.
- It is important to note that for large organisations the turnover has been based on £100m, however the actual turnover could in fact be much higher than this. In those cases, the starting point as a proportion of turnover would be smaller, and would result in a greater difference between the proportions for micro and large organisations.

Tables 1 to 3 below show these results in more detail.

Table 1: Starting points for organisations of different sizes sentenced for health and safety offences

Culpability	Micro		Small		Medium		Large	
	Starting point	% of turnover (based on £2m)	Starting point	% of turnover (based on £10m)	Starting point	% of turnover (based on £50m)	Starting point	% of turnover (based on £100m)
Very high culpability								
Category 1	£250,000	13%	£450,000	5%	£1,600,000	3%	£4,000,000	4%
Category 2	£100,000	5%	£200,000	2%	£800,000	2%	£2,000,000	2%
Category 3	£50,000	3%	£100,000	1%	£400,000	1%	£1,000,000	1%
Category 4	£24,000	1%	£50,000	0.5%	£190,000	0.4%	£500,000	0.5%
High culpability								
Category 1	£160,000	8%	£250,000	3%	£950,000	2%	£2,400,000	2%
Category 2	£54,000	3%	£100,000	1%	£450,000	1%	£1,100,000	1%
Category 3	£30,000	2%	£54,000	0.5%	£210,000	0.4%	£540,000	0.5%
Category 4	£12,000	1%	£24,000	0.2%	£100,000	0.2%	£240,000	0.2%
Medium culpability								
Category 1	£100,000	5%	£160,000	2%	£540,000	1%	£1,300,000	1.3%
Category 2	£30,000	2%	£54,000	1%	£240,000	0.5%	£600,000	0.6%
Category 3	£14,000	1%	£24,000	0.2%	£100,000	0.2%	£300,000	0.3%
Category 4	£6,000	0.3%	£12,000	0.1%	£50,000	0.1%	£130,000	0.1%
Low culpability								
Category 1	£30,000	2%	£45,000	0.5%	£130,000	0.3%	£300,000	0.3%
Category 2	£5,000	0.3%	£9,000	0.1%	£40,000	0.1%	£100,000	0.1%
Category 3	£1,200	0.1%	£3,000	0.03%	£14,000	0.03%	£35,000	0.04%
Category 4	£200	0.01%	£700	0.01%	£3,000	0.01%	£10,000	0.01%

Table 2: Starting points for organisations of different sizes sentenced for food safety and hygiene offences

Culpability	Micro		Small		Medium		Large	
	Starting point	% of turnover (based on £2m)	Starting point	% of turnover (based on £10m)	Starting point	% of turnover (based on £50m)	Starting point	% of turnover (based on £100m)
Very high culpability								
Category 1	£60,000	3%	£120,000	1%	£450,000	1%	£1,200,000	1%
Category 2	£25,000	1%	£50,000	0.5%	£200,000	0.4%	£500,000	0.5%
Category 3	£10,000	0.5%	£18,000	0.2%	£80,000	0.2%	£200,000	0.2%
High culpability								
Category 1	£25,000	1%	£50,000	0.5%	£200,000	0.4%	£500,000	0.5%
Category 2	£12,000	0.6%	£24,000	0.2%	£90,000	0.2%	£230,000	0.2%
Category 3	£4,000	0.2%	£9,000	0.1%	£35,000	0.1%	£90,000	0.1%
Medium culpability								
Category 1	£10,000	0.5%	£18,000	0.2%	£80,000	0.2%	£200,000	0.2%
Category 2	£4,000	0.2%	£8,000	0.1%	£35,000	0.1%	£90,000	0.1%
Category 3	£1,400	0.1%	£3,000	0.03%	£14,000	0.03%	£35,000	0.04%
Low culpability								
Category 1	£1,200	0.1%	£3,000	0.03%	£12,000	0.02%	£35,000	0.04%
Category 2	£500	0.03%	£1,400	0.01%	£7,000	0.01%	£18,000	0.02%
Category 3	£200	0.01%	£700	0.007%	£3,500	0.007%	£10,000	0.01%

Table 3: Starting points for organisations of different sizes sentenced for environmental offences

Culpability	Micro		Small		Medium		Large	
	Starting point	% of turnover (based on £2m)	Starting point	% of turnover (based on £10m)	Starting point	% of turnover (based on £50m)	Starting point	% of turnover (based on £100m)
Very high culpability								
Category 1	£50,000	3%	£100,000	1%	£400,000	1%	£1,000,000	1%
Category 2	£22,000	1%	£45,000	0.5%	£170,000	0.3%	£500,000	0.5%
Category 3	£9,000	0.5%	£17,000	0.2%	£70,000	0.1%	£180,000	0.2%
Category 4	£5,000	0.3%	£10,000	0.1%	£40,000	0.08%	£100,000	0.1%
High culpability								
Category 1	£30,000	2%	£55,000	1%	£220,000	0.4%	£550,000	1%
Category 2	£12,000	1%	£24,000	0.2%	£100,000	0.2%	£250,000	0.3%
Category 3	£5,000	0.3%	£10,000	0.1%	£40,000	0.1%	£100,000	0.1%
Category 4	£3,000	0.2%	£5,000	0.05%	£24,000	0.05%	£60,000	0.06%
Medium culpability								
Category 1	£15,000	1%	£30,000	0.3%	£120,000	0.2%	£300,000	0.3%
Category 2	£6,500	0.3%	£13,000	0.1%	£55,000	0.1%	£140,000	0.1%
Category 3	£2,500	0.1%	£6,000	0.06%	£25,000	0.05%	£60,000	0.06%
Category 4	£1,400	0.1%	£3,000	0.03%	£14,000	0.03%	£35,000	0.04%
Low culpability								
Category 1	£2,500	0.1%	£5,000	0.1%	£20,000	0.04%	£50,000	0.05%
Category 2	£1,000	0.05%	£2,500	0.03%	£10,000	0.02%	£25,000	0.03%
Category 3	£400	0.02%	£1,000	0.01%	£5,000	0.01%	£14,000	0.014%
Category 4	£200	0.01%	£700	0.007%	£3,000	0.006%	£10,000	0.010%

Harm

Health and safety offences are concerned with failures to manage risks to health and safety and do not require proof that the offence caused any actual harm. **The offence is in creating a risk of harm.**

1) Use the table below to identify an initial harm category based on the **risk of harm created by the offence**. The assessment of harm requires a consideration of **both**:

- the seriousness of the harm risked (A, B or C) by the offender’s breach; **and**
- the likelihood of that harm arising (high, medium or low).

Seriousness of harm risked			
	Level A	Level B	Level C
	<ul style="list-style-type: none"> • Death • Physical or mental impairment resulting in lifelong dependency on third party care • Health condition resulting in significantly reduced life expectancy 	<ul style="list-style-type: none"> • Physical or mental impairment, not amounting to Level A, which has a substantial and long-term effect on the sufferer’s ability to carry out normal day-to-day activities or on their ability to return to work • A progressive, permanent or irreversible condition 	<ul style="list-style-type: none"> • All other cases not falling within Level A or Level B
High Likelihood of harm	Harm category 1	Harm category 2	Harm category 3
Medium Likelihood of harm	Harm category 2	Harm category 3	Harm category 4
Low Likelihood of harm	Harm category 3	Harm category 4	Harm category 4 (start towards bottom of range)

2) The court must next consider if the following factors apply. These two factors should be considered in the round in assigning the final harm category.

i) Whether the offence exposed a number of workers or members of the public to the risk of harm. The greater number of people, the greater the risk.

ii) Whether the offence was a significant cause of actual harm.

Consider whether the offender’s breach was a **significant cause**¹ of actual harm and the extent to which other factors contributed to the harm caused. Actions of victims are unlikely to be considered contributory events for sentencing purposes. Offenders are required to protect workers or others who may be neglectful of their own safety in a way which should be reasonably foreseeable.

If one or both of these factors apply the court must consider either moving up a harm category or substantially moving up within the category range at step two overleaf. If already in harm category 1 and wishing to move higher, move up from the starting point at step two overleaf. The court should not move up a harm category if actual harm was caused but to a lesser degree than the harm that was risked, as identified on the scale of seriousness above.

¹A significant cause is one which more than minimally, negligibly or trivially contributed to the outcome. It does not have to be the sole or principal cause.

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Organisations

Breach of duty of employer towards their employees and non-employees

Breach of duty of self-employed to others

Health and Safety at Work Act 1974 (section 33(1)(a) for breaches of sections 2 and 3)

Breach of Health and Safety regulations

Health and Safety at Work Act 1974 (section 33(1)(c))

Triable either way

**Maximum: when tried on indictment: unlimited fine
 when tried summarily: £20,000 fine**

**STEP ONE:
Determining the offence category**

The court should determine the offence category using the culpability and harm factors in the tables below.

Culpability

Where there are factors present in the case that fall in different categories of culpability, the court should balance these factors to reach a fair assessment of the offender's culpability.

Very high	<ul style="list-style-type: none"> • Deliberate breach of or flagrant disregard for the law
High	<ul style="list-style-type: none"> • Offender fell far short of the appropriate standard; for example, by <ul style="list-style-type: none"> ○ failing to put in place measures that are recognised standards in the industry ○ ignoring concerns raised by employees or others ○ failing to make appropriate changes following prior incident(s) exposing risks to health and safety ○ allowing breaches to subsist over a long period of time • Evidence of serious and/or systemic failings within the organisation to address risks to health and safety
Medium	<ul style="list-style-type: none"> • Offender fell short of the appropriate standard in a manner that falls between descriptions in "high" and "low" culpability categories • Systems were in place but these were not sufficiently adhered to or implemented
Low	<ul style="list-style-type: none"> • Offender did not fall far short of appropriate standard; for example, because <ul style="list-style-type: none"> ○ significant efforts were made to address the risk although they were inadequate on this occasion ○ there was no warning indicating a risk to health and safety • Failings were minor and occurred as an isolated incident

Harm

Health and safety offences are concerned with failures to manage risks to health and safety and do not require proof that the offence caused any actual harm. **The offence is in creating a risk of harm.**

1) Use the table below to identify an initial harm category based on the **risk of harm created by the offence**. The assessment of harm requires a consideration of **both**:

- the seriousness of the harm risked (A, B or C) by the offender's breach; **and**
- the likelihood of that harm arising (high, medium or low).

Seriousness of harm risked			
	Level A	Level B	Level C
	<ul style="list-style-type: none"> • Death • Physical or mental impairment resulting in lifelong dependency on third party care for basic needs • Health condition resulting in significantly reduced life expectancy 	<ul style="list-style-type: none"> • Physical or mental impairment, not amounting to Level A, which has a substantial and long-term effect on the sufferer's ability to carry out normal day-to-day activities or on their ability to return to work • A progressive, permanent or irreversible condition 	<ul style="list-style-type: none"> • All other cases not falling within Level A or Level B
High Likelihood of harm	Harm category 1	Harm category 2	Harm category 3
Medium Likelihood of harm	Harm category 2	Harm category 3	Harm category 4
Low Likelihood of harm	Harm category 3	Harm category 4	Harm category 4 (start towards bottom of range)

2) The court must next consider if the following factors apply. These two factors should be considered in the round in assigning the final harm category.

i) Whether the offence exposed a number of workers or members of the public to the risk of harm. The greater number of people, the greater the risk.

ii) Whether the offence was a significant cause of actual harm.

Consider whether the offender's breach was a **significant cause*** of actual harm and the extent to which other factors contributed to the harm caused. Actions of victims **are unlikely** to be considered contributory events **for sentencing purposes**. Offenders are required to protect workers or others who may be neglectful of their own safety in a way which should be **reasonably foreseeable**.

If one or both of these factors apply the court must consider either moving up a harm category or substantially moving up within the category range at step two overleaf. If already in harm category 1 and wishing to move higher, move up from the starting point at step two overleaf. The court should not move up a harm category if actual harm was caused but to a lesser degree than the harm that was risked, as identified on the scale of seriousness above.

*A significant cause is one which more than minimally, negligibly or trivially contributed to the outcome. It does not have to be the sole or principal cause.

**STEP TWO:
Starting point and category range**

Having determined the offence category, the court should identify the relevant table for the offender on the page below. There are tables for different sized organisations.

At step two, the court will be required to focus on the organisation's turnover or equivalent to reach a starting point for a fine within the category range. The court should then consider further adjustment within the category range for aggravating and mitigating features, set out below.

Obtaining financial information

The offender 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, which may include the inference that the offender can pay any fine.

Normally, only information relating to the organisation before the court will be relevant, unless exceptionally it is demonstrated to the court that the resources of a linked organisation are available and can properly be taken into account.

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 (where relevant) 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.

At step two, the court is required to focus on the organisation's annual turnover or equivalent to reach a starting point for a fine. At step three, the court may be required to refer to the other financial factors listed above to ensure that the proposed fine is proportionate.

Very large organisations

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

Large Turnover or equivalent: £50 million and over

	Starting point	Category range
Very high culpability		
Harm category 1	£4,000,000	£2,600,000 - £10,000,000
Harm category 2	£2,000,000	£1,000,000 - £5,250,000
Harm category 3	£1,000,000	£500,000 - £2,700,000
Harm category 4	£500,000	£240,000 - £1,300,000
High culpability		
Harm category 1	£2,400,000	£1,500,000 - £6,000,000
Harm category 2	£1,100,000	£550,000 - £2,900,000
Harm category 3	£540,000	£250,000 - £1,450,000
Harm category 4	£240,000	£120,000 - £700,000
Medium culpability		
Harm category 1	£1,300,000	£800,000 - £3,250,000
Harm category 2	£600,000	£300,000 - £1,500,000
Harm category 3	£300,000	£130,000 - £750,000
Harm category 4	£130,000	£50,000 - £350,000
Low culpability		
Harm category 1	£300,000	£180,000 - £700,000
Harm category 2	£100,000	£35,000 - £250,000
Harm category 3	£35,000	£10,000 - £140,000
Harm category 4	£10,000	£3,000 - £60,000

Medium Turnover or equivalent: between £10 million and £50 million

	Starting point	Category range
Very high culpability		
Harm category 1	£1,600,000	£1,000,000 - £4,000,000
Harm category 2	£800,000	£400,000 - £2,000,000
Harm category 3	£400,000	£180,000 - £1,000,000
Harm category 4	£190,000	£90,000 - £500,000
High culpability		
Harm category 1	£950,000	£600,000 - £2,500,000
Harm category 2	£450,000	£220,000 - £1,200,000
Harm category 3	£210,000	£100,000 - £550,000
Harm category 4	£100,000	£50,000 - £250,000
Medium culpability		
Harm category 1	£540,000	£300,000 - £1,300,000
Harm category 2	£240,000	£100,000 - £600,000
Harm category 3	£100,000	£50,000 - £300,000
Harm category 4	£50,000	£20,000 - £130,000
Low culpability		
Harm category 1	£130,000	£75,000 - £300,000
Harm category 2	£40,000	£14,000 - £100,000
Harm category 3	£14,000	£3,000 - £60,000
Harm category 4	£3,000	£1,000 - £10,000

Small Turnover or equivalent: between £2 million and £10 million

	Starting point	Category range
Very high culpability		
Harm category 1	£450,000	£300,000 - £1,600,000
Harm category 2	£200,000	£100,000 - £800,000
Harm category 3	£100,000	£50,000 - £400,000
Harm category 4	£50,000	£20,000 - £190,000
High culpability		
Harm category 1	£250,000	£170,000 - £1,000,000
Harm category 2	£100,000	£50,000 - £450,000
Harm category 3	£54,000	£25,000 - £210,000
Harm category 4	£24,000	£12,000 - £100,000
Medium culpability		
Harm category 1	£160,000	£100,000 - £600,000
Harm category 2	£54,000	£25,000 - £230,000
Harm category 3	£24,000	£12,000 - £100,000
Harm category 4	£12,000	£4,000 - £50,000
Low culpability		
Harm category 1	£45,000	£25,000 - £130,000
Harm category 2	£9,000	£3,000 - £40,000
Harm category 3	£3,000	£700 - £14,000
Harm category 4	£700	£100 - £5,000

Micro: Turnover or equivalent: not more than £2 million

	Starting Point	Category range
Very high culpability		
Harm category 1	£250,000	£150,000 - £450,000
Harm category 2	£100,000	£50,000 - £200,000
Harm category 3	£50,000	£25,000 - £100,000
Harm category 4	£24,000	£12,000 - £50,000
High culpability		
Harm category 1	£160,000	£100,000 - £250,000
Harm category 2	£54,000	£30,000 - £110,000
Harm category 3	£30,000	£12,000 - £54,000
Harm category 4	£12,000	£5,000 - £21,000
Medium culpability		
Harm category 1	£100,000	£60,000 - £160,000
Harm category 2	£30,000	£14,000 - £70,000
Harm category 3	£14,000	£6,000 - £25,000
Harm category 4	£6,000	£2,000 - £12,000
Low culpability		
Harm category 1	£30,000	£18,000 - £60,000
Harm category 2	£5,000	£1,000 - £20,000
Harm category 3	£1,200	£200 - £7,000
Harm category 4	£200	£50 - £2,000

Annex C

The table below contains a **non-exhaustive** list of 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. **In particular, relevant recent convictions are likely to result in a substantial upward adjustment.** In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness	Factors reducing seriousness or reflecting personal mitigation
<i>Statutory aggravating factors:</i>	<ul style="list-style-type: none"> • No previous convictions or no relevant/recent convictions • Evidence of steps taken to remedy problem • High level of co-operation with the investigation, beyond that which will always be expected • Good health and safety record • Effective health and safety procedures in place • Self-reporting, co-operation and acceptance of responsibility
<ul style="list-style-type: none"> • 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 	
<i>Other aggravating factors include:</i>	
<ul style="list-style-type: none"> • Cost-cutting at the expense of safety • Deliberate concealment of illegal nature of activity • Breach of any court order • Obstruction of justice • Poor health and safety record • Falsification of documentation or licenses • Deliberate failure to obtain or comply with relevant licences in order to avoid scrutiny by authorities • Targeting vulnerable victims 	

STEPS THREE AND FOUR

The court should 'step back', review and, if necessary, adjust the initial fine based on turnover to **ensure that it fulfils the objectives of sentencing** for these offences. The court may adjust the fine upwards or downwards, including outside the range.

STEP THREE:

Check whether the proposed fine based on turnover is proportionate to the overall means of the offender

General principles to follow in setting a fine

The court should finalise 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 the court to take into account the financial circumstances of the offender.

The level of fine should reflect the extent to which the offender fell below the required standard. The fine should meet, in a fair and proportionate way, the objectives of punishment, deterrence and the removal of gain derived through the commission of the offence; it should not be cheaper to offend than to take the appropriate precautions.

The fine must be **sufficiently substantial to have a real economic impact which will bring home to both management and shareholders the need to comply with health and safety legislation.**

Review of the fine based on turnover

The court should 'step back', review and, if necessary, adjust the initial fine reached at step two to **ensure that it fulfils the general principles** set out above. The court may adjust the fine upwards or downwards including outside of the range.

The court should examine the financial circumstances of the offender in the round to assess the economic realities of the organisation and the most efficacious way of giving effect to the purposes of sentencing.

In finalising the sentence, the court should have regard to the following factors.

- The profitability of an organisation will be relevant. If an organisation has a small profit margin relative to its turnover, downward adjustment may be needed. If it has a large profit margin, upward adjustment may be needed.
- Any quantifiable economic benefit derived from the offence, including through avoided costs or operating savings, should normally be added to the fine arrived at in step two. **Where this is not readily available, the court may draw on information available from enforcing authorities and others about general costs of operating 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**, if necessary over a number of years.

STEP FOUR:

Consider other factors that may warrant adjustment of the proposed fine

The court should consider any wider impacts of the fine within the organisation or on innocent third parties; such as (but not limited to):

- fine impairs offender's ability to make restitution to victims;
- impact of fine on offender's ability to improve conditions in the organisation to comply with the law;
- impact of the fine on employment of staff, service users, customers and local economy.(but not shareholders or directors)

Where the fine will fall on public or charitable bodies, the fine should normally be substantially reduced if the offending organisation is able to demonstrate the proposed fine would have a significant impact on the provision of their services.

STEP FIVE:

Consider any factors which indicate a reduction for assistance to the prosecution

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

STEP SIX:

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 SEVEN:

Compensation and ancillary orders

In all cases, the court must consider whether to make ancillary orders. These may include:

Remediation

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.

Forfeiture

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.

Compensation

Where the offence has resulted in loss or damage, the court must consider whether to make a compensation order. The assessment of compensation in cases involving death or serious injury will usually be complex and will ordinarily be covered by

insurance. In the great majority of cases the court should conclude that compensation should be dealt with in the civil court, and should say that no order is made for that reason.

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

Where the offender does not have sufficient means to pay the total financial penalty considered appropriate by the court, compensation and fine take priority over costs.

STEP EIGHT:

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 NINE:

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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Individuals

Breach of duty of employer towards their employees and non-employees

Breach of duty of self-employed to others

Breach of duty of employees at work

Health and Safety at Work Act 1974 (section 33(1)(a) for breaches of sections 2, 3 and 7)

Breach of Health and Safety regulations

Health and Safety at Work Act 1974 (section 33(1)(c))

Secondary Liability

Health and Safety at Work Act 1974 (sections 36 and 37(1) for breaches of sections 2 and 3 and section 33 (1) (C))

Triable either way

Maximum: when tried on indictment: unlimited fine and/or 2 years' custody
when tried summarily: £20,000 fine and/or 6 months' custody (except for breaches of section 7: £5,000 fine and/or 6 months' custody)

Offence range: Conditional discharge – 2 years' custody

**STEP ONE:
Determining the offence category**

The court should determine the offence category using the culpability and harm factors in the tables below.

Culpability

Where there are factors present in the case that fall in different categories of culpability, the court should balance these factors to reach a fair assessment of the offender's culpability.

Very High	<ul style="list-style-type: none"> Where the offender intentionally breached, or flagrantly disregarded, the law
High	<ul style="list-style-type: none"> Actual foresight of, or wilful blindness to, risk of offending but risk nevertheless taken
Medium	<ul style="list-style-type: none"> Offence committed through act or omission which a person exercising reasonable care would not commit
Low	<ul style="list-style-type: none"> Offence committed with little fault, for example, because: <ul style="list-style-type: none"> - significant efforts were made to address the risk although they were inadequate on this occasion - there was no warning indicating a risk to health and safety - failings were minor and occurred as an isolate incident

Harm

Health and safety offences are concerned with failures to manage risks to health and safety and do not require proof that the offence caused any actual harm. **The offence is in creating a risk of harm.**

1) Use the table below to identify an initial harm category based on the **risk of harm created by the offence**. The assessment of harm requires a consideration of **both**:

- the seriousness of the harm risked (A, B or C) by the offender's breach; **and**
- the likelihood of that harm arising (high, medium or low).

Seriousness of harm risked			
	Level A	Level B	Level C
	<ul style="list-style-type: none"> • Death • Physical or mental impairment resulting in lifelong dependency on third party care for basic needs • Health condition resulting in significantly reduced life expectancy 	<ul style="list-style-type: none"> • Physical or mental impairment, not amounting to Level A, which has a substantial and long-term effect on the sufferer's ability to carry out normal day-to-day activities or on their ability to return to work • A progressive, permanent or irreversible condition 	<ul style="list-style-type: none"> • All other cases not falling within Level A or Level B
High Likelihood of harm	Harm category 1	Harm category 2	Harm category 3
Medium Likelihood of harm	Harm category 2	Harm category 3	Harm category 4
Low Likelihood of harm	Harm category 3	Harm category 4	Harm category 4 (start towards bottom of range)

2) The court must next consider if the following factors apply. These two factors should be considered in the round in assigning the final harm category.

i) **Whether the offence exposed a number of workers or members of the public to the risk of harm.** The greater number of people, the greater the risk.

ii) **Whether the offence was a significant cause of actual harm.**

Consider whether the offender's breach was a **significant cause*** of actual harm and the extent to which other factors contributed to the harm caused. Actions of victims **are unlikely** to be considered contributory events **for sentencing purposes**. Offenders are required to protect workers or others who may be neglectful of their own safety in a way which should be **reasonably foreseeable**.

If one or both of these factors apply the court must consider either moving up a harm category or substantially moving up within the category range at step two overleaf. If already in harm category 1 and wishing to move higher, move up from the starting point at step two overleaf. The court should not move up a harm category if actual harm was caused but to a lesser degree than the harm that was risked, as identified on the scale of seriousness above.

*A significant cause is one which more than minimally, negligibly or trivially contributed to the outcome. It does not have to be the sole or principal cause.

**STEP TWO:
Starting point and category range**

Having determined the category, the court should refer to the starting points on the page below to reach a sentence within the category range. The court should then consider further adjustment within the category range for aggravating and mitigating features, set out below.

Obtaining financial information

In setting a fine, the court may conclude that the offender is able to pay any fine imposed unless the offender has supplied any financial information to the contrary. It is for the offender to disclose to the court such data relevant to his financial position as will enable it to assess what he can reasonably afford to pay. If necessary, the court may compel the disclosure of an individual offender's financial circumstances pursuant to section 162 of the Criminal Justice Act 2003. 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.

Starting points and ranges

Where the range includes a potential sentence of custody, the court should consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

Where the range includes a potential sentence of a community order, the court should consider the community order threshold as follows:

- has the community order threshold been passed?

Even where the community order threshold has been passed, a fine will normally be the most appropriate disposal where the offence was committed for economic benefit. Or, consider, if wishing to remove economic benefit derived through the commission of the offence, combining a fine with a community order.

	Starting point	Category range
Very High Culpability		
Harm category 1	18 months' custody	1 – 2 years' custody
Harm category 2	1 year's custody	26 weeks' – 18 months' custody
Harm category 3	26 weeks' custody	Band F fine or high level community order – 1 year's custody
Harm category 4	Band F fine	Band E fine – 26 weeks' custody
High culpability		
Harm category 1	1 year's custody	26 weeks' – 18 months' custody
Harm category 2	26 weeks' custody	Band F fine or high level community order – 1 year's custody
Harm category 3	Band F fine	Band E fine or medium level community order – 26 weeks' custody
Harm category 4	Band E fine	Band D fine – Band E fine
Medium culpability		
Harm category 1	26 weeks' custody	Band F fine or high level community order – 1 year's custody
Harm category 2	Band F fine	Band E fine or medium level community order – 26 weeks' custody
Harm category 3	Band E fine	Band D fine or low level community order – Band E fine
Harm category 4	Band D fine	Band C fine – Band D fine
Low culpability		
Harm category 1	Band F fine	Band E fine or medium level community order – 26 weeks' custody
Harm category 2	Band D fine	Band C – Band D fine
Harm category 3	Band C fine	Band B fine – Band C fine
Harm category 4	Band A fine	Conditional discharge – Band A fine

The table below contains a **non-exhaustive** list of 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. **In particular, relevant recent convictions are likely to result in a substantial upward adjustment.** In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness	Factors reducing seriousness or reflecting personal mitigation
<i>Statutory aggravating factors:</i>	<ul style="list-style-type: none"> • No previous convictions or no relevant/recent convictions • Evidence of steps taken to remedy problem • High level of co-operation with the investigation, beyond that which will always be expected • Good health and safety record • Effective health and safety procedures in place • Self-reporting, co-operation and acceptance of responsibility • Good character and/or exemplary conduct • Inappropriate degree of trust or responsibility • Mental disorder or learning disability, where linked to the commission of the offence • Serious medical conditions requiring urgent, intensive or long term treatment. • Age and/or lack of maturity where it affects the responsibility of the offender • Sole or primary carer for dependent relatives
<ul style="list-style-type: none"> • 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 	
<i>Other aggravating factors include:</i>	
<ul style="list-style-type: none"> • Cost-cutting at the expense of safety • Deliberate concealment of illegal nature of activity • Breach of any court order • Obstruction of justice • Poor health and safety record • Falsification of documentation or licenses • Deliberate failure to obtain or comply with relevant licenses in order to avoid scrutiny by authorities • Targeting vulnerable victims 	

**STEP THREE:
Review any financial element of the sentence**

Where the sentence is or includes a fine, the court should ‘step back’ and, using the factors set out below, review whether the sentence as a whole meets the objectives of sentencing for these offences. The court may increase or reduce the proposed fine reached at step two, if necessary moving outside of the range.

General principles to follow in setting a fine

The court should finalise 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 the court to take into account the financial circumstances of the offender.

The level of fine should reflect the extent to which the offender fell below the required standard. The fine should meet, in a fair and proportionate way, the objectives of punishment, deterrence and the removal of gain derived through the commission of the offence; it should not be cheaper to offend than to take the appropriate precautions.

Review of the fine

Where the court proposes to impose a fine it should “step back”, review and, if necessary, adjust the initial fine reached at step two to **ensure that it fulfils the general principles** set out above.

Any quantifiable economic benefit derived from the offence, including through avoided costs or operating savings, should normally be added to the fine arrived at in step two. **Where this is not readily available, the court may draw on information available from enforcing authorities and others about general costs of operating within the law.**

In finalising the sentence, the court should have regard to the following factors relating to the wider impacts of the fine on innocent third parties; such as (but not limited to):

- impact of fine on offender’s ability to comply with the law;
- impact of the fine on employment of staff, service users, customers and local economy.

**STEP FOUR:
Consider any factors which indicate a reduction for assistance to the prosecution**

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

**STEP FIVE:
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 SIX:**Compensation and ancillary orders**

In all cases, the court must consider whether to make ancillary orders. These may include:

Disqualification of director

An offender may be disqualified from being a director of a company in accordance with section 2 of the Company Directors Disqualification Act 1986. The maximum period of disqualification is 15 years (Crown Court) or 5 years (magistrates' court).

Remediation

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.

Forfeiture

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.

Compensation

Where the offence has resulted in loss or damage, the court must consider whether to make a compensation order. The assessment of compensation in cases involving death or serious injury will usually be complex and will ordinarily be covered by insurance. In the great majority of cases the court should conclude that compensation should be dealt with in the civil courts, and should say that no order is made for that reason.

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

Where the offender does not have sufficient means to pay the total financial penalty considered appropriate by the court, compensation and fine take priority over costs

STEP SEVEN:**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 offending behaviour.

STEP EIGHT:**Reasons**

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

STEP NINE:**Consideration for time spent on bail**

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

Corporate manslaughter

Corporate Manslaughter and Corporate Homicide Act 2007 (section 1)

Triable only on indictment

Maximum: unlimited fine

STEP ONE: Determining the seriousness of the offence

By definition, the **harm** and **culpability** involved in corporate manslaughter will be very serious. Every case will involve death and corporate fault at a high level. The court should assess factors affecting the seriousness of the offence within this context by asking:

(a) How foreseeable was serious injury?

The more foreseeable it was the graver usually will be the offence. Failure to heed warnings or advice from the authorities, employees or others or to respond appropriately to “near misses” arising in similar circumstances may be factors indicating greater foreseeability of serious injury.

(b) How far short of the appropriate standard did the offender fall?

Where an offender falls far short of the appropriate standard, the level of culpability is likely to be high. Lack of adherence to recognised standards in the industry or the inadequacy of training, supervision and reporting arrangements may be relevant factors to consider.

(c) How common is this kind of breach in this organisation?

How widespread was the non-compliance? Was it isolated in extent or, for example, indicative of a systematic departure from good practice across the offender’s operations or representative of systemic failings? Widespread non-compliance is likely to indicate a more serious offence.

(d) Was there more than one death, or a high risk of further deaths, or serious personal injury in addition to death?

The greater the number of deaths, very serious personal injuries or people put at high risk of death, the more serious the offence.

Where the answers to these questions indicate a high level of harm or culpability within the context of this offence the court should consider starting point A at step two. For all other offences the court should consider starting point B.

STEP TWO: Starting point and category range

The court should consider the starting points set out below, before considering additional aggravating and mitigating factors. There are tables for different sized organisations.

Obtaining financial information

The offender 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, which may include the inference that the offender can pay any fine.

Normally, only information relating to the organisation before the court will be relevant, unless it is demonstrated to the court that the resources of a linked organisation are available and can properly be taken into account.

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 (where relevant) 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.

At step two, the court is required to focus on the organisation's annual turnover or equivalent to reach a starting point. At step three, the court may be required to refer to the other financial factors listed above to ensure that the proposed fine is proportionate.

Very large organisations

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

Large organisation (turnover more than £50 million)

Offence category	Starting point	Category range
A	£7,500,000	£4,800,000 – £20,000,000
B	£5,000,000	£3,000,000 - £12,500,000

Medium organisation (turnover £10 million to £50 million)

Offence category	Starting point	Category range
A	£3,000,000	£1,800,000 - £7,500,000
B	£2,000,000	£1,200,000 - £5,000,000

Small organisation (turnover £2 million to £10 million)

Offence category	Starting point	Category range
A	£800,000	£540,000 - £2,800,000
B	£540,000	£350,000 - £2,000,000

Micro organisation (turnover up to £2 million)

Offence category	Starting point	Category range
A	£450,000	£270,000 - £800,000
B	£300,000	£180,000 - £540,000

The table below contains a **non-exhaustive** list of 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.

Factors increasing seriousness	Factors reducing seriousness
<p><i>Statutory aggravating factors:</i></p> <ul style="list-style-type: none"> • 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 	<ul style="list-style-type: none"> • No previous convictions or no relevant/recent convictions • Evidence of steps taken to remedy problem • High level of co-operation with the investigation, beyond that which will always be expected • Good health and safety record • Effective health and safety procedures in place • Self-reporting, co-operation and acceptance of responsibility • Other events beyond the responsibility of the offender contributed to the death (however, actions of victims are highly unlikely to be considered contributory events. Offenders are required to protect workers or others who are neglectful of their own safety in a way which should be anticipated.)
<p><i>Other aggravating factors include:</i></p>	
<ul style="list-style-type: none"> • Cost-cutting at the expense of safety • Deliberate concealment of illegal nature of activity • Breach of any court order • Obstruction of justice • Poor health and safety record • Falsification of documentation or licenses • Deliberate failure to obtain or comply with relevant licences in order to avoid scrutiny by authorities • Offender exploited vulnerable victims 	

STEPS THREE AND FOUR

The court should 'step back', review and, if necessary, adjust the initial fine based on turnover to ensure that it fulfils the objectives of sentencing for these offences. The court may adjust the fine upwards or downwards, including outside the range.

STEP THREE:

Check whether the proposed fine based on turnover is proportionate to the overall means of the offender

General principles to follow in setting a fine

The court should finalise 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.

Fines cannot and do not attempt to value a human life in money. The fine should meet the objectives of punishment, the reduction of offending through deterrence and removal of gain derived through the commission of the offence. The fine **must be sufficiently substantial to have a real economic impact which will bring home to management and shareholders the need to achieve a safe environment for workers and members of the public affected by their activities.**

Review of the fine based on turnover

The court should 'step back', review and, if necessary, adjust the initial fine reached at step two to **ensure that it fulfils the general principles** set out above. The court may adjust the fine upwards or downwards including outside of the range.

The court should examine the financial circumstances of the offender in the round to assess the economic realities of the organisation and the most efficacious way of giving effect to the purposes of sentencing.

In finalising the sentence, the court should have regard to the following factors.

- The profitability of an organisation will be a relevant factor. If an organisation has a small profit margin relative to its turnover, downward adjustment may be needed. If it has a large profit margin, upward adjustment may be needed.
- Any quantifiable economic benefit derived from the offence, including through avoided costs or operating savings, should normally be added to the fine arrived at in step two.
- Whether the fine will have the effect of putting the offender out of business will be relevant; in some 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**, if necessary over a number of years.

STEP FOUR:

Consider other factors that may warrant adjustment of the proposed fine

Where the fine will fall on public or charitable bodies, the fine should normally be substantially reduced if the offending organisation is able to demonstrate the proposed fine would have a significant impact on the provision of their services.

The court should consider any wider impacts of the fine within the organisation or on innocent third parties; such as (but not limited to):

- impact of fine on offender's ability to improve conditions in the organisation to comply with the law;
- impact of the fine on employment of staff, service users, customers and local economy (but not shareholders or directors).

STEP FIVE:

Consider any factors which indicate a reduction for assistance to the prosecution

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

STEP SIX:

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 SEVEN:

Compensation and ancillary orders

In all cases, the court must consider whether to make ancillary orders. These may include:

Publicity Orders

(Section 10 Corporate Manslaughter and Corporate Homicide Act 2007)

Publicity Orders should ordinarily be imposed in a case of corporate manslaughter. They may require publication in a specified manner of:

- a) the fact of conviction;
- b) specified particulars of the offence;
- c) the amount of any fine;
- d) the terms of any remedial order.

The object of the publicity order is deterrence and punishment.

- (i) The order should specify with particularity the matters to be published in accordance with section 10(1). Special care should be taken with the terms of the particulars of the offence committed.
- (ii) The order should normally specify the place where public announcement is to be made, and consideration should be given to indicating the size of any notice or advertisement required. It should ordinarily contain a provision designed to ensure that the conviction becomes known to shareholders in the case of companies and local people in the case of public bodies. Consideration should

be given to requiring a statement on the offender's website. A newspaper announcement may be unnecessary if the proceedings are certain to receive news coverage in any event, but if an order requires publication in a newspaper it should specify the paper, the form of announcement to be made and the number of insertions required.

- (iii) The prosecution should provide the court in advance of the sentencing hearing, and should serve on the offender, a draft of the form of order suggested and the Judge should personally endorse the final form of the order.
- (iv) Consideration should be given to stipulating in the order that any comment placed by the offender alongside the required announcement should be separated from it and clearly identified as such.

A publicity order is part of the penalty. Any exceptional cost of compliance should be considered in fixing the fine. It is not, however, necessary to fix the fine first and then deduct the cost of compliance.

Remediation

(Section 9 Corporate Manslaughter and Corporate Homicide Act 2007)

A defendant ought by the time of sentencing to have remedied any specific failings involved in the offence and if it has not will be deprived of significant mitigation.

If, however, it has not, a remedial order should be considered if it can be made sufficiently specific to be enforceable. The prosecution is required by section 9(2) Corporate Manslaughter and Corporate Homicide Act 2007 to give notice of the form of any such order sought, which can only be made on its application. The Judge should personally endorse the final form of such an order.

The cost of compliance with such an order should not ordinarily be taken into account in fixing the fine; the order requires only what should already have been done.

Compensation

Where the offence has resulted in loss or damage, the court must consider whether to make a compensation order. The assessment of compensation in cases involving death or serious injury will usually be complex and will ordinarily be covered by insurance. In the great majority of cases the court should conclude that compensation should be dealt with in the civil courts, and should say that no order is made for that reason.

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

Where the offender does not have sufficient means to pay the total financial penalty considered appropriate by the court, compensation and fine take priority over costs.

STEP EIGHT:**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 NINE:**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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Organisations

Breach of food hygiene and food safety regulations

England

Food Safety and Hygiene (England) Regulations 2013 (regulation 19(1))

Triable either way

Statutory maximum:

when tried on indictment: unlimited fine

when tried summarily: £5,000 fine

Wales

Food Hygiene (Wales) Regulations 2006 (regulation 17(1))

The General Food Regulations 2004 (regulation 4)

Triable either way

Statutory maximum:

when tried on indictment: unlimited fine

when tried summarily: £5,000 fine

except for regulation 4(b) of the General Food Regulations 2004: £20,000 fine

STEP ONE: Determining the offence category

The court should determine the offence category using only the culpability and harm factors in the tables below. Where an offence does not fall squarely into a category, individual factors may require a **degree of weighting** to make an overall assessment.

Culpability

Very high	<ul style="list-style-type: none"> • Deliberate breach of or flagrant disregard for the law
High	<ul style="list-style-type: none"> • Offender fell far short of the appropriate standard; for example, by <ul style="list-style-type: none"> ○ failing to put in place measures that are recognised standards in the industry ○ ignoring concerns raised by regulators, employees or others ○ allowing breaches to subsist over a long period of time • Evidence of serious, and/or systemic failings within the organisation to address risks to food safety
Medium	<ul style="list-style-type: none"> • Offender fell short of the appropriate standard in a manner that falls between descriptions in “high” and “low” culpability categories • Systems were in place but these were not sufficiently adhered to or implemented
Low	<ul style="list-style-type: none"> • Offender did not fall far short of the appropriate standard; for example, because <ul style="list-style-type: none"> ○ significant efforts were made to secure food safety although they were inadequate on this occasion ○ there was no warning indicating a risk to food safety • Failings were minor and occurred as an isolated incident

Harm

The table below contains factors relating to both actual harm and risk of harm. Dealing with a **risk of harm** involves consideration of both the likelihood of harm occurring and the extent of it if it does.

Category 1	<ul style="list-style-type: none"> • Serious adverse effect(s) on individual(s) and/or having a widespread impact • High risk of an adverse effect on an individual(s) including where supply was to groups that are vulnerable
Category 2	<ul style="list-style-type: none"> • Adverse effect on individual(s) (not amounting to Category 1) • Medium risk of an adverse effect on individual(s) or low risk of serious adverse effect • Regulator and / or legitimate industry substantially undermined by offender's activities • Relevant authorities unable to trace products in order to investigate risks to health, or are otherwise inhibited in identifying or addressing risks to health • Consumer misled regarding food's compliance with religious or personal beliefs
Category 3	<ul style="list-style-type: none"> • Low risk of an adverse effect on individual(s) • Public misled about the specific food consumed, but little or no risk of actual adverse health effect

STEP TWO: Starting point and category range

Having determined the category, the court should identify the relevant table for the offender on the page below. There are tables for different sized organisations.

At step two, the court will be required to focus on the organisation's turnover or equivalent to reach a starting point for a fine within the category range. The court should then consider further adjustment within the category range for aggravating and mitigating features, set out below.

Obtaining financial information

Offenders which are companies, partnerships or bodies delivering a public or charitable service are 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, **which may include the inference that the offender can pay any fine.**

Normally, only information relating to the organisation before the court will be relevant, unless it is demonstrated to the court that the resources of a linked organisation are available and can properly be taken into account.

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, police and 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.

Annex F

At step two, the court is required to focus on the organisation's annual turnover or equivalent to reach a starting point for a fine. At step three, the court may be required to refer to the other financial factors listed above to ensure that the proposed fine is proportionate.

Very large organisations

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

Large

Turnover or equivalent: £50 million and over

	Starting Point	Range
Very high culpability		
Category 1	£1,200,000	£500,000 - £3,000,000
Category 2	£500,000	£200,000 - £1,400,000
Category 3	£200,000	£90,000 - £500,000
High culpability		
Category 1	£500,000	£200,000 - £1,400,000
Category 2	£230,000	£90,000 - £600,000
Category 3	£90,000	£50,000 - £240,000
Medium culpability		
Category 1	£200,000	£80,000 - £500,000
Category 2	£90,000	£35,000 - £220,000
Category 3	£35,000	£20,000 - 100,000
Low culpability		
Category 1	£35,000	£18,000 - £90,000
Category 2	£18,000	£9,000 - £50,000
Category 3	£10,000	£6,000 - £25,000

Medium

Turnover or equivalent: between £10 million and £50 million

	Starting point	Range
Very high culpability		
Category 1	£450,000	£200,000 - £1,200,000
Category 2	£200,000	£80,000 - £500,000
Category 3	£80,000	£40,000 - £200,000
High culpability		
Category 1	£200,000	£90,000 - £500,000
Category 2	£90,000	£35,000 - £220,000
Category 3	£35,000	£18,000 - £90,000
Medium culpability		
Category 1	£80,000	£35,000 - £190,000
Category 2	£35,000	£14,000 - £90,000
Category 3	£14,000	£7,000 - £35,000
Low culpability		
Category 1	£12,000	£7,000 - £35,000
Category 2	£7,000	£3,500 - £18,000
Category 3	£3,500	£2,000 - £10,000

Small

Turnover or equivalent: between £2 million and £10 million

	Starting point	Range
Very high culpability		
Category 1	£120,000	£50,000 - £450,000
Category 2	£50,000	£18,000 - £200,000
Category 3	£18,000	£9,000 - £80,000
High culpability		
Category 1	£50,000	£22,000 - £200,000
Category 2	£24,000	£8,000 - £90,000
Category 3	£9,000	£4,000 - £35,000
Medium culpability		
Category 1	£18,000	£7,000 - £70,000
Category 2	£8,000	£3,000 - £35,000
Category 3	£3,000	£1,500 - £12,000
Low culpability		
Category 1	£3,000	£1,400 - £12,000
Category 2	£1,400	£700 - £7,000
Category 3	£700	£300 - £3,000

Micro*

Turnover or equivalent: not more than £2 million

	Starting point	Ranges
Very high culpability		
Category 1	£60,000	£25,000 - £120,000
Category 2	£25,000	£10,000 - £50,000
Category 3	£10,000	£5,000 - £18,000
High culpability		
Category 1	£25,000	£10,000 - £50,000
Category 2	£12,000	£4,000 - £22,000
Category 3	£4,000	£2,000 - £9,000
Medium culpability		
Category 1	£10,000	£3,000 - £18,000
Category 2	£4,000	£1,400 - £8,000
Category 3	£1,400	£700 - £3,000
Low culpability		
Category 1	£1,200	£500 - £3,000
Category 2	£500	£200 - £1,400
Category 3	£200	£100 - £700

* **Note on statutory maxima on summary conviction.** For offences under *regulation 19(1) Food Safety and Hygiene (England) Regulations 2013* and *regulation 17(1) Food Hygiene (Wales) Regulations 2006* the maximum sentence magistrates may pass on summary conviction is a £5,000 fine. The *General Food Regulations 2004* are only in force in Wales. The maximum sentence on summary conviction for offences under *regulations 4(a) and 4(c) – (e)* is a £5,000 fine, and under *regulation 4(b)*, a £20,000 fine.

Annex F

The table below contains a **non-exhaustive** list of 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. **In particular, relevant recent convictions are likely to result in a substantial upward adjustment.** In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness	Factors reducing seriousness or reflecting personal mitigation
Statutory aggravating factors	<ul style="list-style-type: none"> • No previous convictions or no relevant/recent convictions • Evidence of steps taken to remedy problem • High level of co-operation with the investigation, beyond that which will always be expected • Good food safety / hygiene record • Self-reporting, co-operation and acceptance of responsibility
<ul style="list-style-type: none"> • Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction 	
Other aggravating factors include	
<ul style="list-style-type: none"> • Motivated by financial gain • Deliberate concealment of illegal nature of activity • Established evidence of wider/community impact • Breach of any court order • Obstruction of justice • Poor food safety or hygiene record • Refusal of free advice or training 	

STEPS THREE AND FOUR

The court should 'step back', review and, if necessary, adjust the initial fine based on turnover to **ensure that it fulfils the objectives of sentencing** for these offences.

The court may adjust the fine upwards or downwards, including outside the range.

Full regard should be given to the totality principle at step 8.

STEP THREE: check whether the proposed fine based on turnover is proportionate to the **overall means of the offender**

General principles to follow in setting a fine

The court should finalise the 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 the court to take into account the financial circumstances of the offender.

The level of fine should reflect the extent to which the offender fell below the required standard. **The fine should meet, in a fair and proportionate way, the objectives of punishment, deterrence and the removal of gain derived through the commission of the offence;** it should not be cheaper to offend than to take the appropriate precautions.

The fine must be **sufficiently substantial to have a real economic impact which will bring home to both management and shareholders the need to operate within the law.**

Review of the fine based on turnover

The court should 'step back', review and, if necessary, adjust the initial fine reached at step two to **ensure that it fulfils the general principles** set out above. The court may adjust the fine upwards or downwards including outside of the range.

The court should examine the financial circumstances of the offender in the round to enable the court to assess the economic realities of the company and the most efficacious way of giving effect to the purposes of sentencing.

In finalising the sentence, the court should have regard to the following factors.

- The profitability of an organisation will be relevant. If an organisation has a small profit margin relative to its turnover, downward adjustment may be needed. If it has a large profit margin, upward adjustment may be needed.
- Any quantifiable economic benefit derived from the offence, including through avoided costs or operating savings, should normally be added to the total fine arrived at in step two.
- 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**, if necessary over a number of years.

STEP FOUR: consider other factors that may warrant adjustment of the proposed fine

Where the fine will fall on public or charitable bodies, the fine should normally be substantially reduced if the offending organisation is able to demonstrate the proposed fine would have a significant impact on the provision of their services.

The court should consider any wider impacts of the fine within the organisation or on innocent third parties; such as (but not limited to):

- impact of fine on offender's ability to improve conditions in the organisation to comply with the law;
- impact of the fine on employment of staff, service users, customers and local economy (but not shareholders or directors).

STEP FIVE: Consider any factors which indicate a reduction for assistance to the prosecution

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

STEP SIX: 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 SEVEN: Compensation and ancillary orders

Compensation and ancillary orders

Compensation

Where the offence results in the loss or damage the court must consider whether to make a compensation order. If compensation is awarded, priority should be given to the payment of compensation over payment of any other financial penalty where the means of the offender are limited.

Hygiene Prohibition Order

If the court is satisfied that the health risk condition in Regulation 7(2) is fulfilled it **shall** impose the appropriate prohibition order in Regulation 7(3)

Where a food business operator is convicted of an offence under the Regulations and the court thinks it is proper to do so in all the circumstances of the case, the court **may** impose a prohibition on the operator pursuant to Regulation 7(4). An order under Regulation 7(4) is not limited to cases where there is an immediate risk to public health; the court might conclude that there is such a risk of some future breach of the regulations or the facts of any particular offence or combination of offences may alone justify the imposition of a Hygiene Prohibition Order. In deciding whether to impose an order, the court will want to consider the history of convictions or a failure to heed warnings or advice in deciding whether an order is proportionate to the facts of the case. Deterrence may also be an important consideration.

(These orders are available under both the Food Safety and Hygiene (England) Regulations 2013 and the Food Hygiene (Wales) Regulations 2006.)

Where the offender does not have sufficient means to pay the total financial penalty considered appropriate by the court, compensation and fine take priority over costs.

STEP EIGHT: 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 offending behaviour.

Where the offender is convicted of more than one offence where a fine is appropriate, the court should consider the following guidance from the definitive guideline on Totality.

“The total fine is inevitably cumulative.

The court should determine the fine for each individual offence based on the seriousness of the offence* and taking into account the circumstances of the case including the financial circumstances of the offender so far as they are known, or appear, to the court.

The court should add up the fines for each offence and consider if they are just and proportionate.

If the aggregate total is not just and proportionate the court should consider how to reach a just and proportionate fine. There are a number of ways this can be achieved.

For example

- *where an offender is to be fined for two or more offences that arose out of the same incident or where there are multiple offences of a repetitive kind, especially when committed against the same person, 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 on the other offences.*
- *where an offender is to be fined for two or more offences that arose out of different incidents, it will often be appropriate to impose a separate fine for each of the offences. The court should add up the fines for each offence and consider whether all of the fines can be proportionately reduced. Separate fines should then be passed.*

Where separate fines are passed, the court must be careful to ensure that there is no double counting. ±

Where compensation is being ordered, that will need to be attributed to the relevant offence as will any necessary ancillary orders.”

STEP NINE: 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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Individuals

Breach of food hygiene regulations

England

Food Safety and Hygiene (England) Regulations 2013 (regulation 19(1))

Triable either way

Maximum:

when tried on indictment: unlimited fine and / or 2 years' custody

when tried summarily: £5,000 fine

Wales

Food Hygiene (Wales) Regulations 2006 (regulation 17(1))

Triable either way

Maximum:

when tried on indictment: unlimited fine and / or 2 years' custody

when tried summarily: £5,000 fine

The General Food Regulations 2004 (regulation 4)

Triable either way

Maximum:

when tried on indictment: unlimited fine and / or 2 years' custody

when tried summarily: £5,000 fine and / or 6 months' custody

except for regulations 4(b): £20,000 fine and / or 6 months' custody

STEP ONE: Determining the offence category

The court should determine the offence category using only the culpability and harm factors in the tables below. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting to make an overall assessment.

Culpability

Very High	<ul style="list-style-type: none"> Where the offender intentionally breached, or flagrantly disregarded, the law
High	<ul style="list-style-type: none"> Actual foresight of, or wilful blindness to, risk of offending but risk nevertheless taken
Medium	<ul style="list-style-type: none"> Offence committed through act or omission which a person exercising reasonable care would not commit
Low	<ul style="list-style-type: none"> Offence committed with little fault, for example, because: <ul style="list-style-type: none"> significant efforts were made to address the risk although they were inadequate on this occasion there was no warning indicating a risk to food safety Failings were minor and occurred as an isolated incident

Harm

The table below contains factors relating to both actual harm and risk of harm. Dealing with a **risk of harm** involves consideration of both the likelihood of harm occurring and the extent of it if it does.

Category 1	<ul style="list-style-type: none"> Serious adverse effect(s) on an individual(s) and/or having a widespread impact High risk of an adverse effect on individual(s) – including where supply was to persons that are vulnerable
Category 2	<ul style="list-style-type: none"> Adverse effect on individual(s) (not amounting to Category 1) Medium risk of an adverse effect on individual(s) or low risk of serious adverse effect Regulator and / or legitimate industry substantially undermined by offender's activities Relevant authorities unable to trace products in order to investigate risks to health, or are otherwise inhibited in identifying or addressing risks to health Consumer misled regarding food's compliance with religious or personal beliefs
Category 3	<ul style="list-style-type: none"> low risk of an adverse effect on individual(s) Public misled about the specific food consumed, but little or no risk of actual adverse effect on individual(s)

STEP TWO: Starting point and category range

Having determined the category, the court should refer to the starting points on the next page to reach a sentence within the category range. The court should then consider further adjustment within the category range for aggravating and mitigating features, set out below.

Obtaining financial information

In setting a fine, the court may conclude that the offender is able to pay any fine imposed unless the offender has supplied any financial information to the contrary. It is for the offender to disclose to the court such data relevant to his financial position as will enable it to assess what he can reasonably afford to pay. If necessary, the court may compel the disclosure of an individual offender's financial circumstances pursuant to section 162 of the Criminal Justice Act 2003. 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.

Starting points and ranges

Where the range includes a potential sentence of custody, the court should consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

Where the range includes a potential sentence of a community order, the court should consider the community order threshold as follows:

- has the community order threshold been passed?

Even where the community order threshold has been passed, a fine will normally be the most appropriate disposal. Or, consider, if wishing to remove economic benefit derived through the commission of the offence, combining a fine with a community order*.

* **Note on statutory maxima on summary conviction.** For offences under *regulation 19(1) Food Safety and Hygiene (England) Regulations 2013* and *regulation 17(1) Food Hygiene (Wales) Regulations 2006*, the maximum sentence magistrates may pass on summary conviction is a £5,000 fine; therefore for these offences, magistrates may not pass a

Annex G

	Starting Point	Range
Deliberate		
Harm category 1	9 months' custody	Band F fine – 18 months' custody
Harm category 2	Band F fine	Band E fine – 9 months' custody
Harm category 3	Band E fine	Band D fine – 26 weeks' custody
Reckless		
Harm category 1	Band F fine	Band E fine – 9 months' custody
Harm category 2	Band E fine	Band D fine – 26 weeks' custody
Harm category 3	Band D fine	Band C fine – Band E fine
Medium		
Harm category 1	Band E fine	Band D fine – Band F fine
Harm category 2	Band D fine	Band C fine – Band E fine
Harm category 3	Band C fine	Band B fine – Band C fine
Low		
Harm category 1	Band C fine	Band B fine – Band C fine
Harm category 2	Band B fine	Band A fine – Band B fine
Harm category 3	Band A fine	Conditional discharge – Band A fine

community order. *Regulation 4 of The General Food Regulations 2004* is in force in Wales but not in England. For offences under *regulation 4(a)* and *4(c) – (e)*, the maximum sentence on summary conviction is 6 months' custody and / or a £5,000 fine. For an offence under *regulation 4(b)*, the maximum sentence on summary conviction is 6 months' custody and / or a £20,000 fine.

Annex G

The table below contains a **non-exhaustive** list of 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. **In particular, relevant recent convictions are likely to result in a substantial upward adjustment.** In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness	Factors reducing seriousness or reflecting personal mitigation
Statutory aggravating factors	<ul style="list-style-type: none"> • No previous convictions or no relevant/recent convictions • Evidence of steps taken to remedy problem • High level of co-operation with the investigation, beyond that which will always be expected • Good food safety / hygiene record • Self-reporting, co-operation and acceptance of responsibility • Good character and/or exemplary conduct • Mental disorder or learning disability, where linked to the commission of the offence • Serious medical conditions requiring urgent, intensive or long-term treatment • Age and / or lack of maturity where it affects the responsibility of the offender • Sole or primary carer for dependent relatives
<ul style="list-style-type: none"> • 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 include	
<ul style="list-style-type: none"> • Motivated by financial gain • Deliberate concealment of illegal nature of activity • Established evidence of wider/community impact • Breach of any court order • Obstruction of justice • Poor food safety or hygiene record • Refusal of free advice or training 	

STEP THREE: review any financial element of the sentence

Where the sentence is or includes a fine, the court should ‘step back’ and, using the factors set out in step three, review whether the sentence as a whole meets the objectives of sentencing for these offences. The court may increase or reduce the proposed fine reached at step two, if necessary moving outside of the range.

Full regard should be given to the totality principle at step 7.

General principles to follow in setting a fine

The court should finalise 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 the court to take into account the financial circumstances of the offender.

The level of fine should reflect the extent to which the offender fell below the required standard. **The fine should meet, in a fair and proportionate way, the objectives of punishment, deterrence and the removal of gain derived through the commission of the offence;** it should not be cheaper to offend than to take the appropriate precautions.

Review of the fine

Where the court proposes to impose a fine it should “step back”, review and, if necessary, adjust the initial fine reached at step two to **ensure that it fulfils the general principles** set out above.

Any quantifiable economic benefit derived from the offence, including through avoided costs or operating savings, should normally be added to the total fine arrived at in step two.

In finalising the sentence, the court should have regard to the following factors relating to the wider impacts of the fine on innocent third parties; such as (but not limited to):

- impact of fine on offender’s ability to comply with the law;
- impact of the fine on employment of staff, service users, customers and local economy

STEP FOUR: Consider any factors which indicate a reduction for assistance to the prosecution

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

STEP FIVE: 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 SIX: Compensation and ancillary orders

Compensation

Where the offence results in loss or damage the court must consider whether to make a compensation order. If compensation is awarded, priority should be given to the payment of compensation over payment of any other financial penalty where the means of the offender are limited.

Ancillary Orders

In all cases the court must consider whether to make ancillary orders. These may include:

Hygiene Prohibition Order

If the court is satisfied that the health risk condition in Regulation 7(2) is fulfilled it **shall** impose the appropriate prohibition order in Regulation 7(3).

Where a food business operator is convicted of an offence under the Regulations and the court thinks it proper to do so in all the circumstances of the case, the court **may** impose a prohibition on the operator pursuant to Regulation 7(4). An order under Regulation 7(4) is not limited to cases where there is an immediate risk to public health; the court might conclude that there is such a risk of some future breach of the regulations or the facts of any particular offence or combination of offences may alone justify the imposition of a Hygiene Prohibition Order. In deciding whether to impose an order the court will want to consider the history of convictions or a failure to heed warnings or advice in deciding whether an order is proportionate to the facts of the case. Deterrence may also be an important consideration.

(These orders are available under both the Food Safety and Hygiene (England) Regulations 2013 and the Food Hygiene (Wales) Regulations 2006)

Disqualification of director

An offender may be disqualified from being a director of a company in accordance with section 2 of the Company Directors Disqualification Act 1986. The maximum period of disqualification is 15 years (Crown Court) or 5 years (magistrates' court).

STEP SEVEN: 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 offending behaviour.

Where the offender is convicted of more than one offence where a fine is appropriate, the court should consider the following guidance from the definitive guideline on Totality.

The court should determine the fine for each individual offence based on the seriousness of the offence¹ and taking into account the circumstances of the case including the financial circumstances of the offender so far as they are known, or appear, to the court.

The court should add up the fines for each offence and consider if they are just and proportionate.

If the aggregate total is not just and proportionate the court should consider how to reach a just and proportionate fine. There are a number of ways in which this can be achieved.

For example:

where an offender is to be fined for two or more offences that arose out of the same incident or where there are multiple offences of a repetitive kind, especially when committed against the same person, 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.

Where an offender is to be fined for two or more offences that arose out of different incidents, it will often be appropriate to impose a separate fine for each of the offences. The court should add up the fines for each offence and consider if they are just and proportionate. If the aggregate amount is not just and proportionate the court should consider whether all of the fines can be proportionately reduced. Separate fines should then be passed.

Where separate fines are passed, the court must be careful to ensure that there is no double counting.

Where compensation is being ordered, that will need to be attributed to the relevant offence as will any necessary ancillary orders.”

Where the offender does not have sufficient means to pay the total financial penalty considered appropriate by the court, compensation and fine should take priority over costs.

STEP EIGHT: Reasons

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

STEP NINE: Consideration for time spent on bail

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

Back space

Sentencing Council

Sentencing Council meeting: 17 July 2015
Paper number: SC(15)JUL08 - Youths
Lead officials: Vicky Hunt & Jo Keatley
020 7071 5786
Lead Council member: John Saunders

1 ISSUE

- 1.1 To finalise the list of offences that will be the subject of specific guidelines for youths and to consider an initial draft of the youth guidelines on robbery, dwelling burglary, sexual assault, sexual assault of a child under 13, and causing or inciting a child under 13 to engage in sexual activity.
- 1.2 The timetable is for the youth guidelines and overarching principles to be signed off by November 2015 ready for consultation to take place during February to April 2016. The final post consultation version of the guidelines will be signed off in September 2016 and published in December 2016.

2 RECOMMENDATION

- 2.1 The Council is asked to:
 - finalise the offences that will be the subject of specific youth guidelines;
 - consider postponing the youth guideline on knife offences;
 - consider the proposed sentencing options that should appear within the guidelines; and
 - consider the first drafts of five of the offence specific guidelines, in particular noting the differing structures, the specific youth content, and the proposed sentencing levels.

3 CONSIDERATION

- 3.1 In January of this year the Council discussed and considered the merits of offence specific guidelines for youths. It was widely acknowledged that youth sentencing ought to be individualistic, and that providing specific guidelines creates a danger of shifting the focus of the sentencer away from the offender

and towards the offence and its effects. However the Council also considered that offence specific guidance will assist sentencers in making fair and consistent decisions.

3.2 During the recent road testing, some youth court magistrates indicated that they sometimes felt bereft of guidance when sentencing in the youth court, and most of the sentencers welcomed the idea of offence specific guidelines, particularly for more serious offences. Some also said that whilst they usually sentenced in line with the recommendation from the Youth Offending Team, they would like to have some guidance to help reduce their reliance on others, and so that they could challenge the recommendations on those occasions where they felt the proposal was inappropriate.

3.3 In January the Council decided that on balance there was a need for offence specific guidance for some offences, either because those offences are so serious that the welfare of others outweighs the usual individual considerations pertaining to the welfare of the offender, or in the case of robbery and domestic burglary, because the offence is high volume and there is a need for guidance to assist the courts to apply a consistent approach.

3.4 The Council agreed to the following list:

- Rape – (s1 Sexual Offences Act 2003);
- Assault by penetration - (s2 Sexual Offences Act 2003);
- Sexual assault - (s3 Sexual Offences Act 2003);
- Rape of a child under 13 - (s5 Sexual Offences Act 2003);
- Assault by penetration of a child under 13 - (s6 Sexual Offences Act 2003);
- Sexual Assault of a child under 13 - (s7 Sexual Offences Act 2003);
- Causing or inciting a child under 13 to engage in sexual activity (s8 Sexual Offences Act 2003);
- Robbery (s8 Theft Act 1968);
- Domestic burglary (s9(3)(a) Theft Act 1968); and
- Knife offences (s1 and s1A Prevention of Crime Act 1953 and s139, s139A and s139AA Criminal Justice Act 1988).

3.5 The Council also agreed to update the existing SGC Sexual Offences youth specific guidelines. These guidelines cover those sexual offences that carry a

different statutory maximum for youths than for adults. For each of the offences the maximum for the youth is 5 years as opposed to a maximum of 10 or 14 years for an adult. The offences are:

- Sexual activity with a child (s9 Sexual Offences Act 2003);
- Causing or inciting a child to engage in sexual activity (s10 Sexual Offences Act 2003);
- Engaging in sexual activity in the presence of a child (s11 Sexual Offences Act 2003);
- Causing a child to watch a sexual act (s12 Sexual Offences Act 2003);
- Sexual activity with a child family member (s25 Sexual Offences Act 2003); and
- Inciting a child family member to engage in sexual activity (s26 Sexual Offences Act 2003).

3.6 The above offences are relatively low volume, but as the existing guidelines are now out of date it was agreed that they need to be amended.

Question 1: Is the Council still in agreement that we should produce offence specific guidelines for those offences listed in the above two lists?

Knife offences

3.7 The Office has recently started some preparatory work on the development of a knife offence guideline for adults. So far a project initiation document has been drawn up and the team are starting to think about the research that will be needed to complete the work. Knife offences are expected to be on the Council's agenda from the end of this year, with a provisional date for consultation in September- November 2016, and final publication of a guideline in July 2017.

3.8 Given that the Council will be embarking on very detailed consideration of knife offences we need to consider whether it is sensible to produce a youth guideline on this subject now, in advance of the adult guideline, and before the office has had the opportunity to carry out any detailed work, research or analysis. For all of the other proposed youth guidelines there has been a relatively recent adult equivalent published, and we can lean heavily on those

guidelines, making adjustments to ensure the factors are more youth specific, and to adjust the sentencing levels.

- 3.9 For these reasons it is proposed that we do not produce a knife guideline for youths at this time, but we do so as part of our knife offences project. This rationale can be clearly explained within the youth consultation paper. With the digitalisation of the MCSG it will be possible to insert the youth knife guideline into the other youth guidelines once it is ready, so that they remain as a package of guidance for the assistance of the youth court.

Question 2: Is the Council content to remove knife offences from the list of youth offence specific guidelines?

Youth Sentencing

- 3.10 All of the offences in the two lists above (save for knife crime) are grave crimes, meaning that they could be dealt with in either the youth court or the Crown Court. For this reason the sentencing levels within the draft guidelines include:

- Detention – for those sentences above 2 years which are dealt with by the Crown Court as grave crimes;
- Detention and Training Orders (DTOs) for those cases retained in the youth court where a sentence of 2 years or below is imposed;
- Youth Rehabilitation Orders (YROs) for those cases that reach the ‘serious enough’ threshold; and
- Discharge- which would include both absolute and conditional discharge, the lowest sentences available.

- 3.11 There are other available youth sentences, not specifically mentioned within the draft guidelines, which include:

- Referral orders (both compulsory and discretionary);
- Reparation orders;
- Fines; and
- YRO with Intensive Supervision and Surveillance (YRO with ISS).

- 3.12 Compulsory referral orders stand alone and the draft guidelines provide specific text to make clear that if the compulsory referral order conditions

apply the court must impose the sentence unless a DTO, discharge or hospital order is appropriate.

3.13 Discretionary referral orders, reparation orders and fines are available for those offences that fall below the ‘serious enough’ threshold, and YRO with ISS is available for offences that cross the ‘so serious’ threshold but where the court has chosen not to impose detention. None of these sentences appear as sentencing starting points in the draft guidelines, as they are felt to be too specific. Instead the proposal is to have starting points indicating detention or DTO with a specific length; YRO; and discharge. This covers the 3 key thresholds, and allows sentencers to use the other available sentences within the range.

Question 3: Is the Council in agreement with these sentencing options?

3.14 The proposed draft sentencing guidelines attached to this paper are as follows:

Annex A1	Road testing version of the robbery guideline
Annex A2	Revised version of the robbery guideline (the preferred version)
Annex B	Domestic burglary guideline
Annex C1	Road testing version of the sexual assault guideline
Annex C2	Revised version of the sexual assault guideline (the preferred version)
Annex D	Sexual assault of a child under 13 guideline
Annex E	Causing or inciting a child under 13 to engage in sexual activity guideline

Robbery

3.15 The Council will see two drafts of the guideline at Annex A. The first, A1 was the subject of road testing. The second, A2 is the preferred option, incorporating changes as a result of the information learnt from testing.

3.16 Both draft guidelines have been based on the new draft adult guideline for street and less sophisticated commercial robbery. It is proposed that we only produce one robbery guideline and that we do not provide separate guidelines for professionally planned commercial robbery or dwelling robbery, as these types of offences are rarely committed by youths.

Question 4: Does the Council agree that we need only produce one youth robbery guideline covering the less serious forms of the offence?

3.17 During the production of the adult robbery guideline the Council expressed the view that sentence levels must reflect the serious social problem of

offenders carrying knives or threatening to use knives. It was felt necessary to reflect society's concern that knife crime has become widespread, especially in the case of street robberies. This aim has largely been addressed through the way in which we now assess culpability within the adult guideline, ensuring that those cases involving a knife etc will always end up in the highest categories of culpability.

- 3.18 If the Council is content to adopt the format of the adult guideline for youths, those offences that involve use of, or threats to use a bladed article, firearm or imitation firearm will result in more cases falling within the highest levels of culpability, which is likely to result in some inflation in sentences for youths.
- 3.19 Annex A1 was drafted using the draft adult guideline, but with sentencing levels largely based upon the SGC youth robbery guideline. Road testing showed that the format of the guideline led to an appreciable uplift in sentences.
- 3.20 The Council will know that the sample size for our road testing exercises is very small¹, so findings only give an indication of what *might* happen in practice, but to give an idea of the uplift, the road testing of scenario one (a serious robbery where a vulnerable victim was threatened with a knife) showed an uplift on current sentencing levels of roughly 38 months in custody, and for scenario 2 (a serious robbery with significant force but no weapon), the uplift was roughly 28 months. These increases were due to both high starting points and ranges in the draft guideline, and higher categorisation under the new guideline.
- 3.21 Since the road testing, changes have been made to the draft guideline, in part to reflect the changes that the Council has made to the equivalent adult guideline, but also to address the high starting points and ranges.
- 3.22 The Council will be aware that the existing Overarching Principles directs that there may be occasions where it will be appropriate for a youth sentencer to look at an adult guideline and, depending on maturity, apply a starting point sentence from half to three quarters of that which would have been identified for an adult. Following this principal, the guideline at Annex A2 (and replicated overleaf) includes sentences that are broadly three quarters of the level of the

¹ The sample consisted of 4 district judges and 14 magistrates, yielding 17 interviews in total (two magistrates were interviewed together). Scenario 1 was tested seven times and scenario 2, ten times.

current draft adult guideline. Three quarters has been selected as the guideline is aimed at 17 year olds with the expectation that sentencers move down the range for those offenders that are younger or less mature. The resultant sentences at A1, B1 and A2 are lower than the version that went to road testing and the SGC version, but at B3, C2 and C3 the sentences are marginally higher.

3.23 Based on the sentencers' categorisation during road testing, our estimate of the uplift under the new draft at Annex A2 would be 27 months and 22 months for scenarios 1 and 2 respectively.

3.24 If the Council chooses to adopt a youth guideline that takes a different approach to the adult guideline, in order to avoid inflation in youth sentences, a clear rationale would need to be given in the consultation to explain this.

Question 5: Is the Council content for the youth robbery guideline to adopt the same structure as the new adult guideline?

3.25 The youth specific elements of the guideline have been highlighted in Annex A2 to show the changes that we have made to the adult version of the guideline.

Question 6: Is the Council content with the youth specific factors within the guideline?

The Proposed Youth Sentencing Table:

Harm	Culpability		
	A	B	C
Category 1	<p>Starting point 6 years' detention</p> <p>Category range 5 – 9 years' custody</p>	<p>Starting point 3 years' 6 months detention</p> <p>Category range 24 months' DTO– 6 years' detention</p>	<p>Starting point 3 years' detention</p> <p>Category range 12 months' - 5 years' detention</p>
Category 2	<p>Starting point 3 years' 6 months detention</p> <p>Category range 24 months' DTO– 6 years' detention</p>	<p>Starting point 3 years' detention</p> <p>Category range 12 months' - 5 years' detention</p>	<p>Starting point 18 months DTO</p> <p>Category range YRO – 3 years' detention</p>
Category 3	<p>Starting point 3 years' detention</p> <p>Category range 12 months DTO - 5 years' detention</p>	<p>Starting point 18 months DTO</p> <p>Category range YRO – 3 years' detention</p>	<p>Starting point 6 months DTO</p> <p>Category range YRO – 24 months' DTO</p>

The Draft Adult Street/ Less Sophisticated Commercial Robbery Sentencing Table:

Harm	Culpability		
	A	B	C
Category 1	Starting point 8 years' custody Category range 7 – 12 years' custody	Starting point 5 years' custody Category range 3 – 8 years' custody	Starting point 4 years' custody Category range 2 - 7 years' custody
Category 2	Starting point 5 years' custody Category range 3 – 8 years' custody	Starting point 4 years' custody Category range 2 - 7 years' custody	Starting point 2 years' custody Category range 1 year – 4 years' custody
Category 3	Starting point 4 years' custody Category range 2 - 7 years' custody	Starting point 2 years' custody Category range 1 year – 4 years' custody	Starting point 1 year custody Category range High Level Community Order – 3 years' custody

The SGC Youth Robbery Sentencing table:

Type/nature of activity	Starting point	Sentencing Range
The offence includes the threat or use of minimal force and removal of property.	Community Order	Community Order – 12 months detention and training order
A weapon is produced and used to threaten, and/or force is used which results in injury to the victim.	3 years detention	1-6 years detention
The victim is caused serious physical injury by the use of significant force and/or use of a weapon.	7 years detention	6-10 years detention

3.26 Over the last few years the number of youth offenders sentenced for robbery has declined, from approximately 3,700 in 2011 to 2,300 in 2013. Community orders (YROs) are the most frequent sentence outcome, comprising 73 per cent of those sentenced in 2013. Just under a quarter (23 per cent) of offenders were sentenced to immediate custody in 2013, with an average mean custodial sentence length (after credit for guilty plea) of 1 year 7 months and a median custodial sentence length of 1 year. Of those youths sentenced to custody, 82 per cent received a term of 2 years or less, and 91 per cent, 3 years or less (after credit for guilty plea in each case). The longest custodial sentence length received was 8 years 6 months.

3.27 It is important to bear in mind that whilst a large percentage of young offenders receive a YRO for this offence, there is no way of knowing whether that community order was in fact a YRO with ISS, which is a community

alternative to custody and can only be imposed if the offence has crossed the custody threshold. Therefore, those cases that fall within C3 of our proposed guideline could frequently be sentenced to a YRO with ISS.

- 3.28 The Council may, however, feel that the proposed youth robbery guideline ought to include a starting point of a YRO given that the SGC youth version does and given what we know about the statistics. Doing this would, however, mean moving away from the proposal to include sentencing levels based on three quarters of the adult equivalent.

Question 7: Does the Council agree to the sentencing starting points and ranges currently within the draft youth robbery guideline at Annex A2?

Domestic Burglary

- 3.29 The Council will see the first draft of the guideline at Annex B of the papers. This draft is based on the existing adult domestic burglary guideline. As a result, the Council will note that the format of the guideline is different to the format that the Council has chosen for robbery, and is also different from the guidelines that we will come on to consider for the sexual offences guidelines. The Council may be concerned that the youth package will not be consistent however the alternative would be to provide youth guidelines that are inconsistent with their adult counterparts and would result in much more work within a tight timetable.

Question 8: Does the Council agree to the format of this domestic burglary guideline replicating that of the adult guideline?

- 3.30 The youth specific elements of the guideline have been highlighted in Annex B to show the changes that we have made to the adult version of the guideline.

Question 9: Is the Council content with the youth specific factors within the guideline?

- 3.31 In 2013 approximately 1,600 youth offenders were sentenced for domestic burglary offences. This represented 4 per cent of all youth offences sentenced in 2013. Community orders were the most frequent sentence outcome and in 2013 they comprised 77 per cent of all sentences imposed. This proportion has been increasing since 2010. The proportion of immediate custodial sentences has remained relatively stable over the last five years;

within the range 19 to 22 per cent. In 2013 the average custodial sentence length (after any guilty plea reduction) was 1 year.

3.32 The draft guideline at Annex B includes sentences broadly based on three quarters of that of the adult guideline.

Proposed Youth Sentencing Table

Offence Category	Starting Point (<i>Applicable to all offenders</i>)	Category Range (<i>Applicable to all offenders</i>)
Category 1	24 months DTO	18 months DTO – 4 years' detention
Category 2	6 months DTO	YRO – 18 months DTO
Category 3	YRO	Discharge – 4 months DTO

Existing Adult Guideline Sentencing Table:

Offence Category	Starting Point (Applicable to all offenders)	Sentencing Range
Category 1	3 years' custody	2 - 6 years' custody
Category 2	1 year custody	High level community order – 2 years' custody
Category 3	High level Community Order	Low level community order – 26 weeks' custody

Question 10: Does the Council agree to the sentencing starting points and ranges within the domestic burglary guideline at Annex B?

Sexual Offences Guidelines

3.33 The Council recently produced a Sexual Offences definitive guideline for adults. This guideline was the result of detailed consideration, discussion, research, analysis and testing and it is for that reason that it is proposed that the youth guidelines rely heavily on the format and content. Annexes C1, C2 D, and E include draft guidelines for sexual assault, sexual assault of a child under 13 and causing or inciting a child under 13 to engage in sexual activity.

3.34 Where a young offender commits a sexual offence the Court will need to consider some different factors such as:

- the relative ages of both parties;
- the existence of and nature of any relationship;
- the sexual and emotional maturity of both parties and any emotional or physical effects as a result of the conduct;

- whether in fact a victim freely consented (whilst not a defence it will be relevant to sentence); and
 - whether any breach of duty of responsibility (such as a babysitter, older sibling or family member) or other exploitation is present.
- 3.35 Each of the guidelines has had some youth specific content added to it (highlighted in yellow) to attempt to capture these factors. The majority of the factors already in the adult guidelines are relevant to young people and so they have remained, however a small number of factors have been removed where they appear to be inappropriate.
- 3.36 For each of the draft sex guidelines, sentencing levels are proposed based upon three quarters of the equivalent adult guideline. Next month further road testing will take place of the rape guideline. It will be very useful to find out from sentencers how they feel about the proposed sentencing levels, and whether three quarters of the adult guideline sentence approach is right. The results of that road testing will be presented in September.

Sexual Assault

- 3.37 The Council will see two drafts of the guideline at Annex C. The first, C1 was the subject of road testing. The second, C2 is the preferred option, incorporating changes as a result of the information learnt from testing.
- 3.38 The guidelines at Annex C were based on the adult sexual assault guideline.

Question 11: Does the Council agree to the format of this sexual assault guideline replicating that of the adult guideline?

- 3.39 The guideline has youth specific elements that have been highlighted in Annex C2.

Question 12: Is the Council content with the youth specific factors within the guideline?

- 3.40 Since the road testing some changes have been made, mainly to the sentencing levels. The Council will see that the road testing version included such sentences as Low, Medium and High level YROs. On reflection it may be that these sentences are too specific, also the terminology is inconsistent with that used by the Youth Offending Teams who actually refer to Standard, Enhanced and Intensive YROs. Having looked again at the guideline, and coming back to the principal of applying a sentence based on three quarters

of that of the adult guideline I have suggested the new sentencing levels within Annex C2 (and set out below).

3.41 The number of youth offenders sentenced for sexual assault has fluctuated over the last nine years, with a total of about 120 offenders sentenced in 2013. Of those offenders the majority (86 per cent) received a community order, with just 12 per cent being sentenced to immediate custody. The custodial sentence lengths ranged from a minimum of 4 months (which most offenders were given) to a maximum of 2 years. The mean custodial sentence length was 9 months, and the median 6 months. These averages should, however, be treated with caution, due to the low number of offenders sentenced to immediate custody for this offence.

Proposed Youth Guideline Sentencing Table

	A	B
Category 1	Starting point 3 years detention Category range 24 months' DTO – 5 years detention	Starting point 18 months' DTO Category range 12 months' DTO – 3 years detention
Category 2	Starting point 12 months' DTO Category range 6 months' – 3 years detention	Starting point 6 months' DTO Category range YRO – 1 year detention
Category 3	Starting point 4 months DTO Category range YRO – 6 months' DTO	Starting point YRO Category range Discharge - 4 months' DTO

Existing Adult Guideline Sentencing Table:

	A	B
Category 1	Starting Point 4 years' custody Category Range 3-7 years' custody	Starting Point 2 years' 6 months' custody Category Range 2-4 years' custody
Category 2	Starting Point 2 years' custody Category Range 1-4 years' custody	Starting Point 1 year's custody Category Range High level community order – 2 years' custody
Category 3	Starting Point 26 weeks' custody Category Range High level community order- 1 year's custody	Starting Point High level community order Category Range Medium level community order – 26 weeks' custody

Question 13: Does the Council agree to the sentencing starting points and ranges within the sexual assault guideline at Annex C2?

Sexual Assault of a child under 13

3.42 This draft guideline can be seen at Annex D. It is very similar to the sexual assault guideline, and again the youth specific content has been highlighted. The sentencing levels are broadly three quarters of the level of the adult guideline.

3.43 In 2013 approximately 50 youth offenders were sentenced for these offences. Almost all of the offenders received a community order (96 per cent), but again these are such small numbers that caution should be taken when basing sentencing levels on them.

Proposed Youth Guideline Sentencing Table

	A	B
Category 1	Starting point 4 years detention Category range 3 – 6 years detention	Starting point 3 years' detention Category range 24 months' DTO – 5 years' detention
Category 2	Starting point 3 years' detention Category range 24 months' DTO – 5 years' detention	Starting point 18 months' DTO Category range 6 months DTO - 3 years' detention
Category 3	Starting point 6 months DTO Category range 4 months DTO – 12 months' DTO	Starting point 4 months DTO Category range YRO - 6 months DTO

Existing Adult Guideline Sentencing Table:

	A	B
Category 1	Starting Point 6 years' custody Category Range 4-9 years' custody	Starting Point 4 years' custody Category Range 3-7 years' custody
Category 2	Starting Point 4 years' custody Category Range 3-7 years' custody	Starting Point 2 years' custody Category Range 1-4 years' custody
Category 3	Starting Point 1 year's custody Category Range 26 weeks' - 2 year's custody	Starting Point 26 weeks' custody Category Range High level community order – 1 year's custody

Question 14: Is the Council content with the youth specific content in the guideline and the sentencing levels?

Causing or inciting a child under 13 to engage in sexual activity

3.44 This draft guideline can be seen at Annex E. This guideline is based on its adult equivalent, with appropriate youth specific content (highlighted in yellow). The sentencing levels again reflect three quarters of the level of the adult guideline.

3.45 In 2013, approximately 20 youth offenders were sentenced for these offences. The majority of offenders (81 per cent) received a community order.

Proposed Youth Guideline Sentencing Table

	A	B
Category 1	Starting point 9 years detention Category range 8 – 12 years detention	Starting point 8 years detention Category range 7 – 11 years detention
Category 2	Starting point 6 years detention Category range 3 – 7 years detention	Starting point 4 years detention Category range 24 months' DTO - 6 years detention
Category 3	Starting point 3 years detention Category range 24 months' DTO - 6 years detention	Starting point 12 months' DTO Category range 6 months' DTO - 3 years detention

Existing Adult Guideline Sentencing Table:

	A	B
Category 1	Starting Point 13 years' custody Category Range 11-17 years' custody	Starting Point 11 years' custody Category Range 10-15 years' custody
Category 2	Starting Point 8 years' custody Category Range 5-10 years' custody	Starting Point 6 years' custody Category Range 3-9 years' custody
Category 3	Starting Point 5 year's custody Category Range 3-8 year's custody	Starting Point 2 year's custody Category Range 1-4 year's custody

Question 15: Is the Council content with the youth specific content in the guideline and the sentencing levels?

4 IMPACT

4.1 The potential impact of the proposed guidelines will be explored during road testing, and again during the consultation. The intention is that the new guidelines do not impact sentencing practice but ensure a consistent approach by sentencers. However, should the Council agree that the robbery guideline ought to replicate the adult version, there is likely to be an uplift in sentences for youth robberies involving weapons.

5 RISK

5.1 The vast majority of youth cases will be heard in the youth court, and many are low in volume. It will be difficult to gather reliable evidence and information about current sentencing practice in order to inform recommendations in the guideline.

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Robbery (Street robbery and less sophisticated commercial robbery only)

Theft Act 1968 (section 8(1))

This guideline applies only to offenders aged 17 and under

**Triable only on indictment
Maximum: Life imprisonment**

Offence range:

STEP ONE

Determining the offence category

The court should determine which categories of harm and culpability the offence falls into by reference **only** to the tables below.

CULPABILITY	
A – High Culpability	<ul style="list-style-type: none"> • Use of a weapon to inflict violence • Production of a bladed article, firearm or imitation firearm to threaten violence • Use of very significant force in the commission of the offence • Organised nature of the offence/ significant planning • A leading role where offending is part of a group activity • Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation) or transgender identity (or presumed transgender identity) • Abuse of position
B - Medium Culpability	<ul style="list-style-type: none"> • Production of a weapon to threaten violence • Threat of violence by bladed article, firearm or imitation firearm (but which is not produced) • A significant role where offending is part of the group activity • Other cases where characteristics for categories A or C are not present
C – Lesser Culpability	<ul style="list-style-type: none"> • Performed limited function under direction • Involved through coercion, intimidation or exploitation • Threat or use of minimal force • Very little or no planning • Mental disorder or learning disability where linked to the commission of the offence

HARM	
Category 1	<ul style="list-style-type: none"> • Serious physical and/ or psychological harm caused to the victim • Serious detrimental effect on business (for robbery of small businesses and less sophisticated commercial robbery only) • High value goods or sums (for robbery of small businesses and less sophisticated commercial robbery only)
Category 2	<ul style="list-style-type: none"> • Some physical and/ or psychological harm caused to the victim above the level of harm in this offence • Some detrimental effect on business (for robbery of small businesses and less sophisticated commercial robbery only) • Medium value goods or sums (for robbery of small businesses and less sophisticated commercial robbery only)
Category 3	<ul style="list-style-type: none"> • Factors in categories 1 and 2 not present

STEP TWO

Starting point and category range

Having determined the categories, the court should use the corresponding starting points to reach a sentence within the category range below. **The starting point applies to offenders aged 17. Adjustment is to be made according to the chronological and emotional age of the offender relative to a 17 year old.** Having determined the starting point, step two allows further adjustment for aggravating or mitigating features set out below.

A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

Specific provisions relating to sentencing young people:

Except where the dangerous offender provisions apply:

- (i) Where the young offender is aged 12, 13 or 14, a custodial sentence may only be imposed if the youth is a 'persistent offender' or has committed a 'grave crime' warranting detention for a period in excess of 2 years¹.
- (ii) Where a young offender is aged 10 or 11, no custodial sentence is available in the youth court.
- (iii) Where a custodial sentence is imposed in the youth court, it must be a Detention and Training Order (DTO), which can only be for 4/6/8/10/12/18 or 24 months.
- (iv) Where a custodial sentence is imposed in the Crown Court, it may be a DTO or it may be detention for a period up to the maximum for the offence.

	A	B	C
Category 1	Starting point 7 years detention Category range 5 – 10 years detention	Starting point 5 years detention Category range 3 – 8 years detention	Starting point 3 years detention Category range 1 – 6 years detention
Category 2	Starting point 5 years detention Category range 3 – 8 years detention	Starting point 3 years detention Category range 1 – 6 years detention	Starting point 1 year detention Category range YRO - 3 years detention
Category 3	Starting point 3 years detention Category range 1 – 6 years detention	Starting point 1 year detention Category range YRO - 3 years detention	Starting point YRO Category range YRO - 1 year detention

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

¹ Powers of Criminal Courts (sentencing) Act 2000, s.100

must have particular regard to the welfare, maturity, sexual development and intelligence of the young person. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. **In particular, relevant recent convictions are likely to result in an upward adjustment.** In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Aggravating factors

<i>Statutory aggravating factors</i>

- | |
|--|
| <ul style="list-style-type: none">• 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 |
|--|

<i>Other aggravating factors</i>

- | |
|---|
| <ul style="list-style-type: none">• Specific targeting of a particularly vulnerable victim• Blackmail or other threats made (where not taken into account at step one)• Location of offence• Timing of offence• Use of weapon or other item to frighten or injure• Failure to comply with current court orders• Presence of others, especially children• Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution• Attempts to dispose of or conceal evidence• Commission of offence whilst under the influence of alcohol or drugs |
|---|

Mitigating factors

- | |
|--|
| <ul style="list-style-type: none">• No previous convictions or no relevant/recent convictions• Remorse• Previous good character and/or exemplary conduct• Mental disorder or learning disability, particularly where linked to the commission of the offence |
|--|

Review of the sentence

Once the court has made an initial decision about the sentence it should “step back”, review and, if necessary, adjust the initial sentence reached at step two to ensure that it fulfils the general principles of sentencing youths.
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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

Dangerousness

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to impose a life sentence (section 226(2)) or an extended sentence (section 226B). When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

STEP SIX

Totality principle

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

STEP SEVEN

Ancillary orders

The court must consider whether to make any ancillary orders. The court must also consider what other requirements or provisions may *automatically* apply. Further information is included at Annex A on page XXXX.

STEP EIGHT

Reasons

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

STEP NINE

Consideration for time spent on bail

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

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Robbery – street and less sophisticated commercial

Theft Act 1968 (section 8(1))

This guideline applies only to offenders aged 17 and under

Street/ less sophisticated commercial robbery refers to robberies committed in public places, including those committed in taxis or on public transport. It also refers to unsophisticated robberies within commercial premises or targeting commercial goods.

**Triable only on indictment
Maximum: Life imprisonment**

Offence range: YRO – 6 years' detention

This is a serious specified offence for the purposes of sections 224 and section 226 of the Criminal Justice Act 2003

Grave crime provisions under section 24 Magistrates' Courts Act 1980 and section 91 of the Powers of the Criminal Courts (Sentencing) Act 2000 apply

STEP ONE
Determining the offence category

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

The court should weigh all the factors set out below in determining the offender's culpability.

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.

<p>Culpability demonstrated by one or more of the following:</p> <p>A - High culpability:</p> <ul style="list-style-type: none"> • Use of a weapon to inflict violence • Production of a bladed article or firearm or imitation firearm to threaten violence • Use of very significant force in the commission of the offence • Offence motivated by, or demonstrating, hostility based on the victim's personal characteristics (for example, sex, race, sexual orientation (or presumed sexual orientation))
<p>B - Medium culpability:</p> <ul style="list-style-type: none"> • Production of a weapon other than a bladed article or firearm or imitation firearm to threaten violence • Threat of violence by any weapon (but which is not produced) • Other cases where characteristics for categories A or C are not present
<p>C - Lesser culpability:</p> <ul style="list-style-type: none"> • Involved through coercion, intimidation or exploitation • Participated in offence due to bullying or peer pressure from others • Threat or use of minimal force • Mental disability where linked to the commission of the offence

Harm

The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused to the victim.

Category 1	<ul style="list-style-type: none"> • Serious physical and/or psychological harm caused to the victim • Serious detrimental effect on the business
Category 2	<ul style="list-style-type: none"> • Other cases where characteristics for categories 1 or 3 are not present
Category 3	<ul style="list-style-type: none"> • No/ minimal physical or psychological harm • No/ minimal detrimental effect on the business

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 offenders aged 17. Adjustment is to be made according to the chronological and emotional age of the offender relative to a 17 year old. The starting point applies irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability or harm in step 1, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

Specific provisions relating to sentencing young people:

Except where the dangerous offender provisions apply:

(i) Where the young offender is aged 12, 13 or 14, a custodial sentence may only be imposed if the youth is a 'persistent offender' or has committed a 'grave crime' warranting detention for a period in excess of 2 years.

(ii) Where a young offender is aged 10 or 11, no custodial sentence is available in the youth court.

(iii) Where a custodial sentence is imposed in the youth court, it must be a Detention and Training Order (DTO), which can only be for 4/6/8/10/12/18 or 24 months.

(iv) Where a custodial sentence is imposed in the Crown Court, it may be a DTO or it may be detention for a period up to the maximum for the offence.

Non Custodial Sentences

Where the compulsory referral order conditions apply the court **must** make a referral order unless the court proposes to give the offender a custodial sentence, an absolute or conditional discharge or a hospital order.

Harm	Culpability		
	A	B	C
Category 1	Starting point 6 years' detention Category range 5 – 9 years' custody	Starting point 3 years' 6 months detention Category range 24 months' DTO– 6 years' detention	Starting point 3 years' detention Category range 12 months' DTO - 5 years' detention
Category 2	Starting point 3 years' 6 months detention Category range 24 months' DTO– 6 years' detention	Starting point 3 years' detention Category range 12 months' DTO - 5 years' detention	Starting point 18 months DTO Category range YRO – 3 years' detention
Category 3	Starting point 3 years' detention Category range 12 months DTO - 5 years' detention	Starting point 18 months DTO Category range YRO – 3 years' detention	Starting point 6 months DTO Category range YRO – 24 months' DTO

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. **The court must have regard to these factors as well as the welfare, maturity, sexual development and intelligence of the young person.** The court must identify whether any combination of these or other relevant factors should result in an upward or downward adjustment from the starting point. **In particular, relevant recent convictions are likely to result in an upward adjustment.** In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

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
- Victim is targeted due to a vulnerability (or a perceived vulnerability), including but not limited to age, mental or physical disability
- Involvement of others through coercion, intimidation or exploitation
- Prolonged nature of event

- Restraint, detention or additional degradation of the victim
- Sophisticated organised nature of offence
- A leading role where offending is part of a group activity
- Attempts to conceal/dispose of evidence
- Established evidence of community/wider impact
- Failure to comply with current court orders
- **Offence committed on licence**
- Failure to respond to warnings about behaviour
- Timing of the offence
- Location of the offence
- Attempt to conceal identity (for example, wearing a balaclava or hood)
- Commission of offence whilst under the influence of alcohol or drugs
- Targeting of large sums of money or valuable goods
- High value goods or sums (whether economic, personal or sentimental)
- Location of offence also victim's residence

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Remorse, particularly where evidenced by voluntary reparation to the victim
- Good character and/or exemplary conduct
- Serious medical conditions requiring urgent, intensive or long-term treatment
- Mental disorder or learning disability
- Little or no planning
- Determination and/or demonstration of steps having been taken to address addiction or offending behaviour
- **Peripheral involvement where offence involves a group or gang**

STEP THREE

Review of the sentence

Once the court has made an initial decision about the sentence it should "step back", review and, if necessary, adjust the sentence reached at step two to ensure that it fulfils the general principles of sentencing youths.

STEP FOUR

Consider any factors which indicate a reduction for assistance to the prosecution

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

STEP FIVE

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 SIX

Dangerousness

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to impose a life sentence (section 224A) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

STEP SEVEN

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 EIGHT

Compensation and ancillary orders

In all cases the court should consider whether to make compensation and/or other ancillary orders.

Where the offence involves a firearm or an offensive weapon the court may consider the criteria in section 19 of the Serious Crime Act 2007 for the imposition of a Serious Crime Prevention order.

STEP NINE

Reasons

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

STEP TEN

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.

Domestic Burglary

Theft Act 1968 (section 9)

This guideline applies only to offenders aged 17 and under

Triable either way

Maximum when tried summarily: 2 year's custody

Maximum when tried on indictment: 14 years' custody

Offence range: Discharge – 4 years' detention

This is a serious specified offence for the purposes of sections 224 and section 226 of the Criminal Justice Act 2003

Grave crime provisions under section 24 Magistrates' Courts Act 1980 and section 91 of the Powers of the Criminal Courts (Sentencing) Act 2000 apply

STEP ONE**Determining the offence category**

The court should determine the offence category with reference only to the factors listed in the tables below. In order to determine the category the court should assess the **culpability** and **harm** caused or intended.

The court should weigh all the factors set out below in determining the offender's culpability.

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.

Category 1	Greater harm and higher culpability
Category 2	Greater harm and lower culpability or lesser harm and higher culpability
Category 3	Lesser harm and lesser culpability

Factors indicating greater harm
Theft of/ damage to property causing a significant degree of loss to the victim (whether economic, sentimental or personal value)
Soiling, ransacking or vandalism of property
Occupier at home (or returns home) while offender present
Trauma to the victim, beyond the normal inevitable consequence of intrusion and theft
Violence used or threatened against victim
Context of general public disorder
Factors indicating lesser harm
Nothing stolen or only property of very low value to the victim (whether economic, sentimental or personal)
Limited damage or disturbance to property

Factors indicating higher culpability
Victim or premises deliberately targeted (for example, due to vulnerability or hostility based on disability, race, sexual orientation)
A significant degree of planning or organisation
Knife or other weapon carried (where not charged separately)
Equipped for burglary (for example, implements carried and/ or use of vehicle)
Members of a group or gang
Factors indicating lower culpability
Offence committed on impulse, with limited intrusion into property
Offender exploited by others
Mental disorder or learning disability, where linked to the commission of the offence

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 offenders aged 17. Adjustment is to be made according to the chronological and emotional age of the offender relative to a 17 year old. The starting point applies irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability or harm in step 1, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

Specific provisions relating to sentencing young people:

Except where the dangerous offender provisions apply:

- (i) Where the young offender is aged 12, 13 or 14, a custodial sentence may only be imposed if the youth is a 'persistent offender' or has committed a 'grave crime' warranting detention for a period in excess of 2 years.
- (ii) Where a young offender is aged 10 or 11, no custodial sentence is available in the youth court.
- (iii) Where a custodial sentence is imposed in the youth court, it must be a Detention and Training Order (DTO), which can only be for 4/6/8/10/12/18 or 24 months.
- (iv) Where a custodial sentence is imposed in the Crown Court, it may be a DTO or it may be detention for a period up to the maximum for the offence.

Non Custodial Sentences

Where the compulsory referral order conditions apply the court **must** make a referral order unless the court proposes to give the offender a custodial sentence, an absolute or conditional discharge or a hospital order.

Offence Category	Starting Point (<i>Applicable to all offenders</i>)	Category Range (<i>Applicable to all offenders</i>)
Category 1	24 months DTO	18 months DTO – 4 years' detention
Category 2	6 months DTO	YRO – 18 months DTO
Category 3	YRO	Discharge – 4 months DTO

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. The court must have regard to these factors as well as the welfare, maturity and intelligence of the young person. The court must identify whether any combination of these or other relevant factors should result in an upward or downward adjustment from the starting point. **In particular, relevant recent convictions are likely to result in an upward adjustment.** In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

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
- Victim is targeted due to a vulnerability (or a perceived vulnerability), including but not limited to age, mental or physical disability
- Involvement of others through coercion, intimidation or exploitation
- Prolonged nature of event
- Restraint, detention or additional degradation of the victim
- A leading role where offending is part of a group activity
- Child or vulnerable person at home (or returns home) when offence committed
- Victim compelled to leave their home
- Attempts to conceal/dispose of evidence
- Established evidence of community/wider impact
- Failure to comply with current court orders
- ~~Offence committed on licence~~
- Failure to respond to warnings about behaviour
- Timing of the offence
- Attempt to conceal identity (for example, wearing a balaclava or hood)
- Commission of offence whilst under the influence of alcohol or drugs

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Remorse, particularly where evidenced by voluntary reparation to the victim
- Good character and/or exemplary conduct
- Serious medical conditions requiring urgent, intensive or long-term treatment
- Sole or primary carer for dependant relatives
- Determination and/or demonstration of steps having been taken to address addiction or offending behaviour
- Participated in offence due to bullying or peer pressure from others
- Peripheral involvement where offence involves a group or gang

STEP THREE

Review of the sentence

Once the court has made an initial decision about the sentence it should “step back”, review and, if necessary, adjust the sentence reached at step two to ensure that it fulfils the general principles of sentencing youths.

STEP FOUR

Consider any factors which indicate a reduction for assistance to the prosecution

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

STEP FIVE

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 SIX

Dangerousness

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to impose a life sentence (section 224A) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

STEP SEVEN

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 EIGHT

Compensation and ancillary orders

In all cases the court should consider whether to make compensation and/or other ancillary orders.

Where the offence involves a firearm or an offensive weapon the court may consider the criteria in section 19 of the Serious Crime Act 2007 for the imposition of a Serious Crime Prevention order.

STEP NINE

Reasons

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

STEP TEN

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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Sexual Assault

Sexual Offences Act 2003 (section 3)

This guideline applies only to offenders aged 17 and under

Triable either way
Maximum: 7 years' custody

Offence range:

STEP ONE

Determining the offence category

The court should determine which categories of harm and culpability the offence falls into by reference **only** to the tables below.

HARM		CULPABILITY	
		A	B
Category 1	<ul style="list-style-type: none"> Severe psychological or physical harm Abduction Violence or threats of violence Forced/uninvited entry into victim's home 	<ul style="list-style-type: none"> Significant degree of planning Offender acts together with others to commit the offence Use of alcohol/drugs on victim to facilitate the offence Abuse of trust Previous violence against victim Offence committed in course of burglary Recording of the offence Offence racially or religiously aggravated Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation) or transgender identity (or presumed transgender identity) Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability) 	Factor(s) in category A not present
Category 2	<ul style="list-style-type: none"> Touching of naked genitalia or naked breasts Prolonged detention/sustained incident Additional degradation/humiliation Victim is particularly vulnerable due to personal circumstances* <p>*for sexual assault of a child under 13 please refer to the guideline on page xxxx</p>		
Category 3	Factor(s) in categories 1 and 2 not present		

STEP TWO

Starting point and category range

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. **The starting point applies to offenders aged 17. Adjustment is to be made according to the chronological and emotional age of the offender relative to a 17 year old.** Having determined the starting point, step two allows further adjustment for aggravating or mitigating features set out below.

A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

Specific provisions relating to sentencing young people:

Except where the dangerous offender provisions apply:

(i) Where the young offender is aged 12, 13 or 14, a custodial sentence may only be imposed if the youth is a 'persistent offender' or has committed a 'grave crime'¹ warranting detention for a period in excess of 2 years².

(ii) Where a young offender is aged 10 or 11, no custodial sentence is available in the youth court.

(iii) Where a custodial sentence is imposed in the youth court, it must be a Detention and Training Order (DTO), which can only be for 4/6/8/10/12/18 or 24 months.

(iv) Where a custodial sentence is imposed in the Crown Court, it may be a DTO or it may be detention for a period up to the maximum for the offence.

	A	B
Category 1	Starting point 3 years detention Category range 1 – 5 years detention	Starting point 18 months detention Category range Medium level YRO – 3 years detention
Category 2	Starting point 18 months detention Category range Medium level YRO – 3 years detention	Starting point 6 months detention Category range Low level YRO – 18 months detention
Category 3	Starting point High level YRO Category range Low level YRO – 10 months' detention	Starting point Low level YRO Category range Discharge - High level YRO

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. The court must have particular regard to the welfare, maturity, sexual development and intelligence of the young person. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. **In particular, relevant recent convictions are likely to result in an upward adjustment.** In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Aggravating factors
<i>Statutory aggravating factors</i>
<ul style="list-style-type: none"> • 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

¹ Rape is a grave crime

² Powers of Criminal Courts (sentencing) Act 2000, s.100

Other aggravating factors

- Specific targeting of a particularly vulnerable victim
- Blackmail or other threats made (where not taken into account at step one)
- Location of offence
- Timing of offence
- Use of weapon or other item to frighten or injure
- Failure to comply with current court orders
- Presence of others, especially children
- Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution
- Attempts to dispose of or conceal evidence
- Commission of offence whilst under the influence of alcohol or drugs

Mitigating factors

- No previous convictions **or** no relevant/recent convictions
- Remorse
- Previous good character and/or exemplary conduct
- Mental disorder or learning disability, particularly where linked to the commission of the offence

Review of the sentence

Once the court has made an initial decision about the sentence it should “step back”, review and, if necessary, adjust the initial sentence reached at step two to ensure that it fulfils the general principles of sentencing youths.

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

Dangerousness

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to impose a life sentence (section 226(2)) or an extended sentence (section 226B). When sentencing

offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

STEP SIX

Totality principle

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

STEP SEVEN

Ancillary orders

The court must consider whether to make any ancillary orders. The court must also consider what other requirements or provisions may *automatically* apply. Further information is included at Annex A on page XXXX.

STEP EIGHT

Reasons

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

STEP NINE

Consideration for time spent on bail

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

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Sexual Assault

Sexual Offences Act 2003 (section 3)

This guideline applies only to offenders aged 17 and under

Triable either way
Maximum: 7 years' custody

Offence range: Discharge – 3 years' detention

This is a serious specified offence for the purposes of sections 224 and section 226 of the Criminal Justice Act 2003

Grave crime provisions under section 24 Magistrates' Courts Act 1980 and section 91 of the Powers of the Criminal Courts (Sentencing) Act 2000 apply

STEP ONE
Determining the offence category

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

The court should weigh all the factors set out below in determining the offender’s culpability.

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		CULPABILITY	
		A	B
Category 1	<ul style="list-style-type: none"> Severe psychological or physical harm Abduction Violence or threats of violence Forced/uninvited entry into victim’s home 	<ul style="list-style-type: none"> Significant degree of planning Offender acts together with others to commit the offence Use of alcohol/drugs on victim to facilitate the offence Grooming behaviour used against victim* Abuse of trust Previous violence against victim Offence committed in course of burglary Sexual images of victim recorded, solicited or shared* Deliberate isolation of victim* Commercial exploitation and/or motivation Offence racially or religiously aggravated 	Factor(s) in category A not present
Category 2	<ul style="list-style-type: none"> Touching of naked genitalia or naked breasts Prolonged detention/ sustained incident Additional degradation/ humiliation Substantial age gap between the parties Victim is particularly vulnerable due to personal circumstances* <p>*for sexual assault of a child under 13 please refer to the guideline on page xxxx</p>		

* These factors are not in the adult version of the guideline, but do appear in the adult Sexual Assault of a child under 13, guideline. The factors appear relevant and I think should be added to this guideline.

Category 3	Factor(s) in categories 1 and 2 not present		<ul style="list-style-type: none"> • Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation) or transgender identity (or presumed transgender identity) • Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability) 	
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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 offenders aged 17. Adjustment is to be made according to the chronological and emotional age (including sexual maturity) of the offender relative to a 17 year old. The starting point applies irrespective of plea or previous convictions.

A case of particular gravity, reflected by multiple features of culpability or harm in step 1, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

Where there is a sufficient prospect of rehabilitation, a YRO with a sex offender treatment programme requirement under section 1(1)(d) of the Criminal Justice and Immigration Act 2008 can be a proper alternative to a short length custodial sentence.

Comment [VH1]: Awaiting info from YJB as to whether this is applicable – not sure if sex offender treatment programmes are widely available.

Specific provisions relating to sentencing young people:

Except where the dangerous offender provisions apply:

(i) Where the young offender is aged 12, 13 or 14, a custodial sentence may only be imposed if the youth is a 'persistent offender' or has committed a 'grave crime' warranting detention for a period in excess of 2 years.

(ii) Where a young offender is aged 10 or 11, no custodial sentence is available in the youth court.

(iii) Where a custodial sentence is imposed in the youth court, it must be a Detention and Training Order (DTO), which can only be for 4/6/8/10/12/18 or 24 months.

(iv) Where a custodial sentence is imposed in the Crown Court, it may be a DTO or it may be detention for a period up to the maximum for the offence.

Non Custodial Sentences

Where the compulsory referral order conditions apply the court **must** make a referral order unless the court proposes to give the offender a custodial sentence, an absolute or conditional discharge or a hospital order.

	A	B
Category 1	Starting point 3 years detention Category range 24 months' DTO – 5 years detention	Starting point 18 months' DTO Category range 12 months' DTO – 3 years detention
Category 2	Starting point 12 months' DTO Category range 6 months' – 3 years detention	Starting point 6 months' DTO Category range YRO – 1 year detention
Category 3	Starting point 4 months DTO Category range YRO – 6 months' DTO	Starting point YRO Category range Discharge - 4 months' DTO

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. **The court must have regard to these factors as well as the welfare, maturity, sexual development and intelligence of the young person.** The court must identify whether any combination of these or other relevant factors should result in an upward or downward adjustment from the starting point. **In particular, relevant recent convictions are likely to result in an upward adjustment.** In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

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:

- Specific targeting of a particularly vulnerable victim
- Blackmail, **bullying** or other threats made (where not taken into account at step one)
- Location of offence
- Timing of offence
- Use of weapon or other item to frighten or injure
- Failure to comply with current court orders
- Presence of others, especially children
- Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution
- Attempts to dispose of or conceal evidence
- Commission of offence whilst under the influence of alcohol or drugs

Factors reducing seriousness or reflecting personal mitigation

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

- Previous good character and/or exemplary conduct
- Mental disorder or learning disability, particularly where linked to the commission of the offence
- Relationship of genuine affection
- Behaviour stems from sexual immaturity or confusion
- Participated in offence due to bullying or peer pressure from others

STEP THREE

Review of the sentence

Once the court has made an initial decision about the sentence it should “step back”, review and, if necessary, adjust the sentence reached at step two to ensure that it fulfils the general principles of sentencing youths.

STEP FOUR

Consider any factors which indicate a reduction for assistance to the prosecution

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

STEP FIVE

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 SIX

Dangerousness

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to impose a life sentence (section 224A) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

STEP SEVEN

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 EIGHT

Compensation and ancillary orders

In all cases the court should consider whether to make compensation and/or other ancillary orders.

Where the offence involves a firearm or an offensive weapon the court may consider the criteria in section 19 of the Serious Crime Act 2007 for the imposition of a Serious Crime Prevention order.

STEP NINE

Reasons

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

STEP TEN

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.

Sexual Assault of a child under 13

Sexual Offences Act 2003 (section 7)

This guideline applies only to offenders aged 17 and under

Triable either way

Maximum: 14 years' custody

Offence range: YRO – 6 years' detention

This is a serious specified offence for the purposes of sections 224 and 226 of the Criminal Justice Act 2003

Grave crime provisions under section 24 Magistrates' Courts Act 1980 and section 91 of the Powers of the Criminal Courts (Sentencing) Act 2000 apply

STEP ONE
Determining the offence category

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

The court should weigh all the factors set out below in determining the offender's culpability.

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		CULPABILITY	
		A	B
Category 1	<ul style="list-style-type: none"> Severe psychological or physical harm Abduction Violence or threats of violence Forced/uninvited entry into victim's home 	<ul style="list-style-type: none"> Significant degree of planning Offender acts together with others to commit the offence Use of alcohol/drugs on victim to facilitate the offence Grooming behaviour used against victim Abuse of trust Previous violence against victim Offence committed in course of burglary Sexual images of victim recorded, retained, solicited or shared Deliberate isolation of victim Commercial exploitation and/ or 	Factor(s) in category A not present
Category 2	<ul style="list-style-type: none"> Touching of naked genitalia or naked breasts Prolonged detention/ sustained incident Additional degradation/ humiliation Substantial age gap between the parties Child is particularly vulnerable due to personal circumstances 		

Category 3	Factor(s) in categories 1 and 2 not present		<p>motivation</p> <ul style="list-style-type: none"> • Offence racially or religiously aggravated • Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation) or transgender identity (or presumed transgender identity) • Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability) 	
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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 offenders aged 17. Adjustment is to be made according to the chronological and emotional age (including sexual maturity) of the offender relative to a 17 year old. The starting point applies irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability or harm in step 1, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

Specific provisions relating to sentencing young people:

Except where the dangerous offender provisions apply:

- (i) Where the young offender is aged 12, 13 or 14, a custodial sentence may only be imposed if the youth is a 'persistent offender' or has committed a 'grave crime' warranting detention for a period in excess of 2 years.
- (ii) Where a young offender is aged 10 or 11, no custodial sentence is available in the youth court.
- (iii) Where a custodial sentence is imposed in the youth court, it must be a Detention and Training Order (DTO), which can only be for 4/6/8/10/12/18 or 24 months.
- (iv) Where a custodial sentence is imposed in the Crown Court, it may be a DTO or it may be detention for a period up to the maximum for the offence.

Non Custodial Sentences

Where the compulsory referral order conditions apply the court **must** make a referral order unless the court proposes to give the offender a custodial sentence, an absolute or conditional discharge or a hospital order.

	A	B
Category 1	Starting point 4 years detention Category range 3 – 6 years detention	Starting point 3 years' detention Category range 24 months' DTO – 5 years' detention
Category 2	Starting point 3 years' detention Category range 24 months' DTO – 5 years' detention	Starting point 18 months' DTO Category range 6 months DTO - 3 years' detention
Category 3	Starting point 6 months DTO Category range 4 months DTO – 12 months' DTO	Starting point 4 months DTO Category range YRO - 6 months DTO

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. The court must have regard to these factors as well as the welfare, maturity, sexual development and intelligence of the young person. The court must identify whether any combination of these or other relevant factors should result in an upward or downward adjustment from the starting point. **In particular, relevant recent convictions are likely to result in an upward adjustment.** In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

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:

- Specific targeting of a particularly vulnerable victim
- Blackmail, **bullying** or other threats made (where not taken into account at step one)
- Location of offence
- Timing of offence
- Use of weapon or other item to frighten or injure
- Failure to comply with current court orders
- Presence of others, especially children
- Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution
- Attempts to dispose of or conceal evidence
- Commission of offence whilst under the influence of alcohol or drugs

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions or no relevant/recent convictions
- Remorse
- Previous good character and/or exemplary conduct
- Mental disorder or learning disability, particularly where linked to the commission of the offence
- Relationship of genuine affection
- Behaviour stems from sexual immaturity or confusion
- Participated in offence due to bullying or peer pressure from others

STEP THREE

Review of the sentence

Once the court has made an initial decision about the sentence it should “step back”, review and, if necessary, adjust the sentence reached at step two to ensure that it fulfils the general principles of sentencing youths.

STEP FOUR

Consider any factors which indicate a reduction for assistance to the prosecution

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

STEP FIVE

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 SIX

Dangerousness

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to impose a life sentence (section 224A) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

STEP SEVEN

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 EIGHT

Compensation and ancillary orders

In all cases the court should consider whether to make compensation and/or other ancillary orders.

Where the offence involves a firearm or an offensive weapon the court may consider the criteria in section 19 of the Serious Crime Act 2007 for the imposition of a Serious Crime Prevention order.

STEP NINE

Reasons

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

STEP TEN

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.

Causing or inciting a child under 13 to engage in sexual activity

Sexual Offences Act 2003 (section 8)

This guideline applies only to offenders aged 17 and under

Triable either way

Maximum: 14 years' custody

Offence range: 6 months' DTO – 12 years' detention

This is a serious specified offence for the purposes of sections 224 and 226 of the Criminal Justice Act 2003.

Grave crime provisions under section 24 Magistrates' Courts Act 1980 and section 91 of the Powers of the Criminal Courts (Sentencing) Act 2000 apply

STEP ONE**Determining the offence category**

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

The court should weigh all the factors set out below in determining the offender's culpability.

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		CULPABILITY	
		A	B
Category 1	<ul style="list-style-type: none"> The extreme nature of one or more category 2 factors or the extreme impact caused by a combination of category 2 factors may elevate to category 1 	<ul style="list-style-type: none"> Significant degree of planning Offender acts together with others to commit the offence Use of alcohol/drugs on victim to facilitate the offence Grooming behaviour used against victim Abuse of trust Previous violence against victim Offence committed in course of burglary Sexual images of victim recorded, retained, solicited or shared Deliberate isolation of victim Commercial exploitation and/ or motivation Offence racially or religiously aggravated Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation) or transgender identity (or presumed transgender identity) Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability) 	Factor(s) in category A not present
Category 2	<ul style="list-style-type: none"> Severe psychological or physical harm Penetration of vagina or anus (using body or object) by, or of, the victim Penile penetration of mouth by, or of, the victim Additional degradation/humiliation Abduction Prolonged detention/sustained incident Violence or threats of violence Forced/uninvited entry into victim's home Child is particularly vulnerable due to extreme youth and/or personal circumstances Substantial age gap between the parties 		
Category 3	Factor(s) in categories 1 and 2 not present		

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 offenders aged 17. Adjustment is to be made according to the chronological and emotional age (including sexual maturity) of the offender relative to a 17 year old. The starting point applies irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability or harm in step 1, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

Specific provisions relating to sentencing young people:

Except where the dangerous offender provisions apply:

- (i) Where the young offender is aged 12, 13 or 14, a custodial sentence may only be imposed if the youth is a 'persistent offender' or has committed a 'grave crime' warranting detention for a period in excess of 2 years.
- (ii) Where a young offender is aged 10 or 11, no custodial sentence is available in the youth court.
- (iii) Where a custodial sentence is imposed in the youth court, it must be a Detention and Training Order (DTO), which can only be for 4/6/8/10/12/18 or 24 months.
- (iv) Where a custodial sentence is imposed in the Crown Court, it may be a DTO or it may be detention for a period up to the maximum for the offence.

Non Custodial Sentences

Where the compulsory referral order conditions apply the court **must** make a referral order unless the court proposes to give the offender a custodial sentence, an absolute or conditional discharge or a hospital order.

	A	B
Category 1	Starting point 9 years detention Category range 8 – 12 years detention	Starting point 8 years detention Category range 7 – 11 years detention
Category 2	Starting point 6 years detention Category range 3 – 7 years detention	Starting point 4 years detention Category range 24 months' DTO - 6 years detention
Category 3	Starting point 3 years detention Category range 24 months' DTO - 6 years detention	Starting point 12 months' DTO Category range 6 months' DTO - 3 years detention

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. The court must have regard to these factors as well as the welfare, maturity, sexual development and intelligence of the young person. The court must identify whether any combination of these or other relevant factors should result in an upward or downward adjustment from the starting point.

In particular, relevant recent convictions are likely to result in an upward adjustment. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

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:

- Specific targeting of a particularly vulnerable victim
- Ejaculation (where not taken into account at step one)
- Blackmail, **bullying** or other threats made (where not taken into account at step one)
- Pregnancy or STI as a consequence of offence
- Location of offence
- Timing of offence
- Use of weapon or other item to frighten or injure
- Victim compelled to leave their home, school etc
- Failure to comply with current court orders
- Presence of others, especially children
- Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution
- Attempts to dispose of or conceal evidence
- Commission of offence whilst under the influence of alcohol or drugs
- Victim encouraged to recruit others

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Remorse
- Previous good character and/or exemplary conduct
- Mental disorder or learning disability, particularly where linked to the commission of the offence
- Relationship of genuine affection
- Behaviour stems from sexual immaturity or confusion
- Participated in offence due to bullying or peer pressure from others

STEP THREE

Review of the sentence

Once the court has made an initial decision about the sentence it should “step back”, review and, if necessary, adjust the sentence reached at step two to ensure that it fulfils the general principles of sentencing youths.

STEP FOUR

Consider any factors which indicate a reduction for assistance to the prosecution

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

STEP FIVE

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