

**Sentencing Council meeting:** 15 May 2015  
**Paper number:** SC(15)MAY05 – Theft  
**Lead official:** Mandy Banks 020 7071 5785  
**Lead Council member:** Sarah Munro

## **1 ISSUE**

1.1 This is the fourth meeting to discuss the draft theft guidelines post consultation, and will focus on changes to the wording discussed at the last meeting, in particular around the treatment of previous convictions, and the issue of prevalence.

1.2 The meeting will also look at proposed amendments to the aggravating and mitigating factors present within the draft guidelines.

## **2 RECOMMENDATION**

2.1 That the Council considers the proposals and:

- Agrees with the wording used to adjust for harm in category one throughout the guidelines, as discussed at **para 3.1, page 2 onwards**
- Indicates if the wording around previous convictions should be placed separately under the sentencing table, model 1, or whether instead the existing wording regarding convictions under statutory aggravating factors should be expanded, model 2, as discussed at **para 3.2, page 2 onwards;**
- Agrees the revised wording and placement of wording for drug, alcohol and mental health treatment orders, as discussed at **para 3.3 page 3**
- Considers the treatment of prevalence within the guidelines, following feedback from the consultation, as discussed at **para 3.11 on page 5**
- Agrees the suggested amendments to the aggravating and mitigating factors, as discussed at **para 3.19, page 8 onwards**

### **3 CONSIDERATION**

3.1 Following the discussion at the last meeting, a number of changes have been made to the wording regarding the assessment of harm, which can be seen in track changes on pages 2 and 3 of the shop theft guideline at Annex A. The word 'significant' has been added to the assessment of harm, so that an adjustment can only be made for any 'significant additional harm'. New wording has also been placed directly under the heading of category 1, in the sentencing table on page 3, regarding any adjustment for significant additional harm within category 1. This follows the decision at the last meeting to include all the wording for adjustment for any harm whilst sentencers are deciding the sentence initially, rather than making a later adjustment to the sentence through the use of aggravating and mitigating factors. Consequently, those factors relating to harm for value and harm at category 1 have been removed from the aggravating and mitigating factors. This wording and approach has been replicated on the general theft, making off without payment and handling guidelines, which use the same method to assess harm.

***Question one - are Council content with the revised wording regarding the assessment of harm within the guidelines?***

*Wording relating to previous convictions-model one – Annex A*

3.2 The Council will recall at the last meeting that the placement of, and the exact wording relating to the consideration of previous convictions was discussed. In the development of the guidelines prior to consultation, the Council gave very careful consideration to this wording, given the reality that for the offences covered by the guidelines, 41% of offenders sentenced in 2012 had 4 or more previous convictions. For shop theft, the figure rises to 41% of offenders having 10 or more relevant and recent previous convictions. Accordingly, the Council felt that the guidelines had to give the courts some guidance on this issue. Consultation responses on the Council's proposed approach to the treatment of previous convictions was overwhelmingly positive, 88% of respondents agreed with the Council's approach. Respondents in favour included the Justices' Clerks' Society, Council of Circuit Judges, Council of District Judges and the Magistrates Association, who commented ... *'we welcome the balance of allowing sufficient flexibility whilst regularising sentencing practice'*.

3.3 In the version of the guidelines consulted on, the wording regarding previous convictions was immersed within a large section of other text, under the sentencing table, so in response to feedback that the guideline needed streamlining to make it

easier to use, the wording was moved into a separate box. This was the version the Council saw last month, with the text in a box sitting alongside another box containing text relating to alternatives to custody, such as a drug rehabilitation requirement (this version can be seen at page 4 of Annex C - which remains unchanged since last month, pending a decision on how this information should be presented). The two boxes were deliberately placed alongside one another to provide a balance - to offer the courts options for sentencing that would be the most appropriate for the needs of individual offenders. As agreed at the last meeting, the alternatives to custody information has been expanded to include consideration of alcohol and mental health treatment requirements, and can be seen on page 3 of Annex A.

3.4 Concerns were raised at the last meeting that as the wording is now more prominent within the guideline, this potentially could lead to an increase in sentencing. It should be noted however that the wording used in the theft guideline only states that '*...relevant recent convictions may justify an upward adjustment*', compared to the wording in the burglary guideline, (a comparable offence guideline in relation to offenders with high number of previous convictions) which states that '*...relevant recent convictions are likely to result in an upwards adjustment*'. Therefore, it is suggested that the wording used in the theft guideline is less likely to result in sentences being increased than in the burglary guideline.

3.5 At the last meeting, the Council also discussed including some new wording as a check to sentencers regarding the use of custody, potentially to be included at category 3 in the table, to state '*In category 3 cases the court must be satisfied that in all cases a non custodial option is not possible*'. It is suggested that if wording of this nature is to be included, category 3 may not be the best place for it to sit, given that a custodial option is only available in one box in category 3. As an alternative, a new step could be included within the theft guidelines, in a similar way to the environmental and health and safety guidelines 'step back' feature. The proposed wording can be seen as a new step three on page 5 of Annex A, entitled '*Review of sentence*' and reads:

*'The court should now 'step back' and reflect as to whether the proposed sentence is proportionate, just and the most appropriate for the offender given all the circumstances. In particular, where custody is contemplated, the court should consider the custody threshold as follows:*

*Has the custody threshold been passed?*

*If so, is it inevitable that a custodial sentence be imposed?*

*If so, can that sentence be suspended?*

3.6 The purpose of including this wording is to ensure that after the court has decided on a sentence, following steps 1 and 2, the court then ‘steps back’ and the sentence is then further considered, is it just, is it proportionate, and so on, to try and ensure there is one more opportunity to consider the sentence in the round, before it is handed down, to act as a check against a disproportionate custodial sentence for example.

*Wording relating to previous convictions –model 2 - Annex B*

3.7 As set out above, model 1 provides for the wording relating to previous convictions to sit underneath expanded text relating to alternatives to custody underneath the sentencing table, and includes a new step back feature. As an alternative to this, model 2 has instead expanded the existing wording relating to previous convictions under the statutory aggravating factors heading, this can be seen on page 4 of Annex B. This option was suggested by the Law Society in their consultation response, who were concerned that the version consulted on could lead to double counting, and suggested that the narrative under statutory factors should just be expanded upon, rather than have wording regarding previous convictions in two separate places.

3.8 Also, by just expanding the guidance in this section, and removing the wording as a separate feature under the sentencing table, the wording has less prominence, so may result in fewer sentences being increased for previous convictions. A small number of organisations responding to the consultation (Prison Reform Trust, Quakers, Women in Prison, Criminal Justice Alliance) were concerned about the potential disproportionate effect the wording may have on offenders/increase in sentences.

3.9 However, Professor Andrew Ashworth in his response was concerned that the Council was not providing enough guidance on the issue of previous convictions in this guideline, commenting that ‘...*this (wording) does not amount to ‘guidance’ rather, it simply consigns the whole issue to judicial discretion....This seems to amount to a return to the ‘no two cases are the same’ and ‘each case on its own facts’ assertions....the issues of principle should be resolved at a general level, by the Council in its guidance*’. He goes further to say that the Council appears not to have discharged its statutory duty under s.121(6) of the Coroners and Justice Act

2009 that guidelines should '*...include criteria, and provide guidance, for determining the weight to be given to previous convictions of the offender*'.

3.10 On careful balance of all the issues involved, it is recommended that the Council agree to model 1 at Annex A, to keep the previous convictions text in its existing wording separately, underneath the enlarged box regarding alternatives to custody. This provides courts with a balanced way of considering issues relating to previous convictions, and whether alternatives to custody should be considered for offenders dependant on alcohol, drugs or with mental health conditions, and purposely asks courts to consider alternatives to custody first. Offenders with previous convictions are such a feature within the sentencing of theft offences that specific guidance on the issue is necessary. The proposed new step back feature would act as a check to courts to ensure that the most appropriate and just sentence has been arrived at. Given the volumes sentenced for theft offences and concerns regarding potential escalation within sentencing, the Council may like to consider placing this new step back feature within all of the 6 theft guidelines.

***Question two – Does the Council agree to the recommendation that model 1 is used in shop theft, along with a new 'step back' feature?***

***Question three - If so, does the Council also wish to replicate this approach in the rest of the guidelines? (Guidelines attached at annexes D, F and G still contain the wording/format used in the consultation version).***

#### *Prevalence*

3.11 The Council will recall that specific wording relating to the treatment of prevalence issues was included within the shop and general theft guidelines, due to the prevalence of particular types of theft offending within certain geographical areas. Some courts have issued local guidance on prevalence, Westminster Magistrates court has for a number of years taken an individual approach to the theft from the person guideline, reflecting the particular problems they state exist in their local area. Their guidance imposes a starting point and range above that imposed by the existing SGC guidelines, so for the lowest category, they take a starting point of 18 weeks custody, the top of the SGC range, rather than the starting point of a medium level community order. If the intention of this was to act as a deterrent, it would seem to have failed, given the length of time their guidance has existed. As the aim is for all courts to use the Sentencing Council guidelines, not individual versions, when the theft guidelines were revised it was with a view to Westminster no longer using their

own guidance. Accordingly, the Council gave very careful consideration to the wording around prevalence used in the consultation.

3.12 The wording used built on the wording from the SGC '*Overarching Principles: Seriousness*' guideline, which read:

*'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 being caused to the community. It is essential that sentencers both have supporting evidence from an external source (for example the Local Criminal Justice Board) to justify claims that a particular crime is prevalent in their area and are satisfied that there is a compelling need to treat the offence more seriously than elsewhere'*

3.13 The wording used in the draft guidelines consulted on can be seen at page 4 of Annex A (following feedback from the consultation that the guideline needed to be streamlined the wording now appears in a box rather than in a series of bullet points). As Criminal Justice Boards no longer exist, a reference to Community Impact statements was used, as an example of an external evidence source that courts could use. Respondents to the consultation were overwhelmingly in agreement with the principle of treating prevalence as an aggravating factor, 84% of respondents said they were in agreement with the Council's approach, these included the Law Society, Justices' Clerks' Society, Council of Circuit Judges and the Council of District Judges. A number suggested that the wording should also be included within the making off without payment and abstracting electricity guidelines, as it was thought to be a relevant factor.

3.14 However a number of consultees said that evidence of the impact of prevalence in an area would rarely be available, particularly in the form of Community Impact Statements. The Prison Reform Trust were concerned about the effect of this wording on the sentencing of individual offenders and thought it unjust. The Magistrates Association were not in agreement with the approach taken, and felt that the wording set too stringent a test for the courts to show prevalence in their area. They suggested as an alternative having 'location and timing of offences', as an aggravating factor, to cover pick pocketing at large tourist events, concerts, etc.

3.15 In their consultation response, Westminster Magistrates court do not comment on the prevalence wording used in the guideline, merely stating that they have their own structured approach to sentencing theft from the person, and instead focus on the consultation proposals regarding theft from the person. They stated that

the proposals underestimated the victim impact of this offence. They specifically mentioned that items stolen may be of low monetary but high sentimental value, the inconvenience of having to report/replace stolen cards, loss of personal/economic data from phones/laptops, and the fear and emotional distress caused by the offences.

3.16 Council will recall however that the draft proposals *specifically* set out to give increased focus on the wider impact on victims of theft, other than just financial loss, this was explained in the overarching issues at the start of the consultation document. All of the factors mentioned above by Westminster, are included, and can be seen on page 2 of Annex C. It is possible that Westminster missed the emphasis on these factors, as the explanation for some of these factors was given within the shop theft section of the consultation, (to avoid repetition the explanation of similar factors was not given for each guideline) and they only focused on the general theft section of the guideline. Westminster felt that additional harm, 'harm B' should be elevated into 'harm A' the financial section, Council will recall that it was agreed last month to merge harm A and B. This will also have the effect to put the assessment of financial loss and any additional harm on a more equal basis.

3.17 As discussed above, the original draft proposals and the revisions made post consultation will deal with the concerns Westminster raised, (emphasis should be given to the treatment of additional harm of thefts to victims within the guidelines in the consultation response document in case this was missed by respondents). In their response, they also include evidence (Police Witness statement/crime figures) to show that Westminster has twice the levels of theft from the person as the next prolific borough, and the impact the offences have on the area. Therefore, given that they can obtain suitable evidence to demonstrate that prevalence may influence sentence levels, the draft guideline can adequately address sentencing for prevalence issues, and their individual guidance is unnecessary. For example, Westminster could, for an offender committing a theft up to £500, in medium culpability, give a sentence of between a medium level community order up to 26 weeks custody, if there was significant additional harm caused by the offence.

3.18 The intention in the drafting of the wording was to make it clear that courts had to have evidence to justify taking prevalence into account when sentencing, and not rely on 'local knowledge'. Central and South West Staffordshire Bench suggested that the wording is altered to read '...has supporting evidence from an external source, **where available**, for example, Community Impact Statements...' This of course would weaken the test. Given that the wording is based on the existing SGC

guidance, any substantive changes to the test in the theft guideline may render the SGC guidance out of date. Accordingly, it is recommended that the existing prevalence wording used in the consultation is retained.

***Question four– Does Council wish to retain the prevalence wording in its existing form? Should the prevalence wording be included within the making off without payment and abstracting electricity guidelines?***

#### *Aggravating factors*

3.19 Respondents to the consultation supported the vast majority of the proposed aggravating factors within the guidelines. A few additional factors were suggested which apply to a number of the guidelines, as follows. A number of respondents suggested that there should be a factor to reflect offences motivated by racial or other personal characteristics of the victim, in the shop theft, general theft and making off without payment guidelines. Council will recall that such wording appears as a culpability factor in a number of other offences, burglary, robbery, assault and so on. In other guidelines, such as dangerous dogs, the wording appears as an aggravating factor, because the factor is less likely to be an integral part of the offence, but if present can make the offence more serious and can increase a sentence. Similarly to dangerous dog offences, it is suggested that this factor is less likely to be an integral part of the offence, so should not be a culpability factor, but be included as an aggravated factor in the shop theft, general theft and making off without payment guidelines, and can be seen at page 4 of Annex A.

3.20 In shop theft, a small number of respondents suggested that '*blame wrongly placed*' on others should be included as a factor, this is currently a factor in general theft. This could cover scenarios in shop theft where an offender deliberately implicates others, placing the stolen goods in their bag, etc, and it is suggested that this factor is included.

3.21 In its response to the consultation, the Stolen and Missing Pets Alliance (SAMPA) called for there to be a separate guideline for the offence of theft of a pet. They felt strongly that the theft of pet should not be treated in the same way as the theft of a lap top. Neil Parish MP has also written to the Council twice to support this argument. In response to his letters, we have explained that when considering additional harm, the emotional distress caused by such an offence can be taken into account by the court. Thefts of pets does appear to be on the increase, (currently estimated at 3 a day) particularly sought after, expensive pedigree cats and dogs. To reflect this, it is suggested that an additional aggravating factor of '*wider impact of a*

*theft, such as loss of a pet*' could be included in general theft, at page 4 of Annex C. This wording is intended to capture any wider impact of a theft, not just of a pet, that hasn't been captured at step one.

3.22 The National Policing Lead on Acquisitive crime in their response to the consultation commented that the draft guidelines did not incorporate a way to reflect the offending patterns of some foreign nationals, who may have previous recent and relevant convictions, particularly for shop theft and theft from the person, committed in a number of EU countries. A number of offenders are known to the Police to travel to different EU capital cities, with the intention of committing thefts, moving from city to city in rapid succession. It is very difficult for the courts to obtain antecedents data from other countries without adjourning cases, at which point the offender will then not return for sentencing. This then means that the court sentences without the benefit of antecedents for these offenders, so may give a lighter sentence to an offender than it may give to another offender committing a similar offence, for whom they have the information about their previous convictions. There is arguably then less of a deterrent element with the sentence a foreign national offender receives. This point was also made at the consultation event held with British Transport Police, and Westminster Magistrates court also reference the frequency that they deal with foreign offenders.

3.23 As a way of reflecting this issue within the guidelines, it is suggested that an additional aggravating factor of '*theft committed shortly after arriving in the country,*' is included, which can be seen on page 4, of Annex C, however it is suggested that it is included throughout the guidelines.

***Question five- does the Council agree with the inclusion of the suggested additional aggravating factors?***

*Mitigating factors*

3.24 Within the guidelines, there is currently a mitigating factor of '*remorse, especially where evidenced by voluntary reparation to the victim*'. This appears in shop theft, general theft, and making off without payment. A number of respondents suggested that the wording should just be shortened to '*remorse*', without further qualification, and that it should be included across all the guidelines. This is how the factor appears in other guidelines, for example, fraud, accordingly it is suggested that this factor is shortened to just '*remorse*' and included throughout the guidelines.

3.25 Council will recall in an earlier discussion that it was agreed to put a mitigating factor in the shop theft guideline of '*offender experiencing **exceptional** financial*

*hardship*'. From the consultation responses, there was also some support for this to be included as a mitigating factor in the abstracting electricity guideline, to reflect offenders who have committed the offence due to extreme financial hardship, benefits wrongly stopped, and so on. There was also some support for this factor to be included within general theft, with people commenting that this factor is currently referenced as mitigation in the existing MCSG for all the theft offences. Rather than put as a factor within all the theft offences, Council may like to additionally include it as a factor just within the general theft and abstracting electricity guidelines, having already decided it should be a factor within shop theft.

3.26 There was also some support for a mitigating factor in the general theft guideline for offenders who voluntarily reported the offending or cooperated in more complex offences (in breach of trust cases for example.) A factor of '*offender cooperated with the investigation and/or voluntarily reported the offending*' could be included as mitigation, as can be seen at page 4 of Annex C. Similarly there was some support for a mitigating factor in handling, to reflect offenders who through their cooperation with an investigation led to the authorities identifying other offenders involved within the criminal activity. It is therefore suggested that a factor of '*offender cooperated with the investigation which led to the identification of other offenders*' could be included, as can be seen at page 4 of Annex F. This would only be relevant for offenders not already given a discounted sentence under step four of the guidelines.

***Question six –Does the Council agree with the suggested inclusion of the additional mitigating factors?***

3.27 The other changes to the guidelines that were discussed at the last meeting, have been made and are:

- additional wording on the front of the shop theft guideline to reflect shop theft offences under £200 **page 1, Annex A**
- Rewording of the description around harm in making off without payment **pages 2 and 3 of Annex D**
- Agreed rewording in culpability A, rewording and additional harm factor included in the handling guideline, **pages 2 and 3 of Annex F**
- Rewording of the greater harm factors in the going equipped guideline- **page 3 of Annex G.**

3.28 There are two further Council meetings to discuss the draft guidelines post consultation, with the sign off of the definitive guidelines to take place at the July meeting, ahead of publication of the definitive guideline scheduled for October. At the June meeting the sentence levels for all the guidelines will be considered, and their proportionality with other similar offences. At the July meeting the coherence of the guidelines overall, and proportionality to other offences such as fraud will need to be considered.

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## Model 1

### 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 – 4 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) <b>or</b> Medium value with <b>significant</b> additional harm to the victim or others
Category 2	Medium value goods stolen (£200 to £1,000) <b>and</b> no additional harm <b>or</b> Low value with <b>significant</b> additional harm to the victim or others
Category 3	Low value goods stolen (up to £200) <b>and</b> Little or no <b>significant</b> 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
<b>Category 1</b> Where the value greatly exceeds £1,000 it may be appropriate to move outside the identified range. <a href="#">Adjustment should be made for any significant additional harm factors.</a>	<b>Starting point</b> 26 weeks' custody  <b>Category range</b> 13 weeks'-4 years' custody	<b>Starting point</b> Medium level community order  <b>Category range</b> Low level community order -13 weeks' custody	<b>Starting point</b> Band C fine  <b>Category range</b> Band B fine- Low level community order
<b>Category 2</b>	<b>Starting point</b> 13 weeks' custody  <b>Category range</b> High level community order -26 weeks' custody	<b>Starting point</b> Low level community order  <b>Category range</b> Band C fine – Medium level community order	<b>Starting point</b> Band B fine  <b>Category range</b> Band A fine –Band C fine
<b>Category 3</b>	<b>Starting point</b> High level community order  <b>Category range</b> Low level community order-13 weeks' custody	<b>Starting point</b> Band C fine  <b>Category range</b> Band B fine - Low level community order	<b>Starting point</b> Band A fine  <b>Category range</b> Discharge –Band B fine

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

[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.

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In particular, **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.

#### 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.
- [Presence of a child](#)
- [Blame wrongly placed on others](#)
- [Offence motivated by factors including, but not limited to, the victim's race, age, sex or disability](#)
- [Theft committed shortly after arriving in the country](#)
- 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
- 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

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#### 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:

- 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****Review of sentence**

The court should now 'step back' reflect as to whether the proposed sentence is proportionate, just and the most appropriate for the offender given all the circumstances. In particular, where custody is contemplated the court should consider the custody threshold as follows:

Has the custody threshold been passed?

If so, is it inevitable that a custodial sentence be imposed?

If so, can that sentence be suspended?

**STEP FOUR****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.

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**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.

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**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 overall offending behaviour.

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**STEP SEVEN****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.

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**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.

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**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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## Model 2

### 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 – 4 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
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- Offender subject to a banning order from the relevant store
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## 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) <b>or</b> Medium value with <b>significant</b> additional harm to the victim or others
Category 2	Medium value goods stolen (£200 to £1,000) <b>and</b> no additional harm <b>or</b> Low value with <b>significant</b> additional harm to the victim or others
Category 3	Low value goods stolen (up to £200) <b>and</b> Little or no <b>significant</b> 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
<b>Category 1</b> Where the value greatly exceeds £1,000 it may be appropriate to move outside the identified range. <a href="#">Adjustment should be made for any significant additional harm factors.</a>	<b>Starting point</b> 26 weeks' custody  <b>Category range</b> 13 weeks'-4 years' custody	<b>Starting point</b> Medium level community order  <b>Category range</b> Low level community order -13 weeks' custody	<b>Starting point</b> Band C fine  <b>Category range</b> Band B fine- Low level community order
<b>Category 2</b>	<b>Starting point</b> 13 weeks' custody  <b>Category range</b> High level community order -26 weeks' custody	<b>Starting point</b> Low level community order  <b>Category range</b> Band C fine – Medium level community order	<b>Starting point</b> Band B fine  <b>Category range</b> Band A fine –Band C fine
<b>Category 3</b>	<b>Starting point</b> High level community order  <b>Category range</b> Low level community order-13 weeks' custody	<b>Starting point</b> Band C fine  <b>Category range</b> Band B fine - Low level community order	<b>Starting point</b> Band A fine  <b>Category range</b> Discharge –Band B fine

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

[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. In cases involving significant persistent offending, the community and custodial thresholds may be crossed even though the offence may otherwise warrant a lesser sentence.
- Offence committed whilst on bail

##### Other aggravating factors:

- Stealing goods to order
- [Presence of a child](#)
- [Blame wrongly placed on others](#)
- [Offence motivated by factors including, but not limited to, the victim's race, age, sex or disability](#)
- [Theft committed shortly after arriving in the country](#)
- 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

##### 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:

- 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.

#### Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Remorse,
- 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

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**STEP THREE****Review of sentence**

The court should now 'step back' and reflect as to whether the proposed sentence is proportionate, just and the most appropriate for the offender given all the circumstances. In particular, where custody is contemplated the court should consider the custody threshold as follows:

Has the custody threshold been passed?

If so, is it inevitable that a custodial sentence be imposed?

If so, can that sentence be suspended?

**STEP FOUR****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.

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**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.

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**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 overall offending behaviour.

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**STEP SEVEN****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.

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**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.

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**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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### 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
- Significant breach of degree of trust or responsibility
- Sophisticated nature of offence/significant planning
- Offence conducted over sustained period of time
- Large number of persons affected by the offence
- Theft 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
- Some degree of planning involved
- 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,
- A 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) <b>or</b> High value with <b>significant</b> additional harm to the victim or others
Category 2	High value goods stolen (£5,000 to £50,000) <b>and</b> no additional harm <b>or</b> Medium value with <b>significant</b> additional harm to the victim or others
Category 3	Medium value goods stolen (£500 to £5,000) <b>and</b> no additional harm <b>or</b> Low value with <b>significant</b> additional harm to the victim or others
Category 4	Low value goods stolen (up to £500) <b>and</b> Little or no <b>significant</b> 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
<b>Category 1</b> Where the value greatly exceeds £50,00, it may be appropriate to move outside the identified range. <b>Adjustment should be made for any significant additional harm factors</b>	<b>Starting point</b> 5 years' custody  <b>Category range</b> 3 - 6 years' custody	<b>Starting point</b> 2 years' custody  <b>Category range</b> 1 - 3 years' custody	<b>Starting point</b> 13 weeks' custody  <b>Category range</b> High level community order –1 years' custody
<b>Category 2</b>	<b>Starting point</b> 3 years' custody  <b>Category range</b> 1- 4 years' custody	<b>Starting point</b> 26 weeks' custody  <b>Category range</b> 13 weeks' -1 year 6 months' custody	<b>Starting point</b> Medium level community order  <b>Category range</b> Low level community order-13 weeks custody
<b>Category 3</b>	<b>Starting point</b> 36 weeks' custody  <b>Category range</b> 26 weeks' - 2 years' custody	<b>Starting point</b> High level community order  <b>Category range</b> Medium level community order-26 weeks' custody	<b>Starting point</b> Low level community order  <b>Category range</b> Band B fine – Medium level community order
<b>Category 4</b>	<b>Starting point</b> 13 weeks' custody  <b>Category range</b> High level community order – 36 weeks' custody	<b>Starting point</b> Medium level community order  <b>Category range</b> Band C fine –High level community order	<b>Starting point</b> Band C fine  <b>Category range</b> Discharge -Low level community order

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

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

Consecutive sentences for multiple offences may be appropriate- please refer to the Offences

In particular, **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

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 factors including, but not limited to, the victim's race, age, sex or disability
- Wider impact of a theft, such as loss of a pet
- Theft committed shortly after arriving in the country
- 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)

**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:

- 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

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

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Remorse
- Offender cooperated with the investigation and/or voluntarily reported the offending,
- 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
- Inappropriate degree of trust or responsibility
- Offender experiencing exceptional financial hardship

**Deleted:** particularly where evidenced by voluntary reparation to the victim

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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## Annex D

### 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. 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.

CULPABILITY demonstrated by one or more of the following:	
A - High culpability:	<ul style="list-style-type: none"> <li>• A leading role where offending is part of a group activity</li> <li>• Involvement of others through coercion, intimidation or exploitation</li> <li>• Sophisticated nature of offence/significant planning</li> <li>• <u>Offence</u> involving intimidation or the use or threat of force</li> <li>• Deliberately targeting victim on basis of vulnerability</li> </ul>
B - Medium culpability:	<ul style="list-style-type: none"> <li>• A significant role where offending is part of a group activity</li> <li>• All other cases where characteristics for categories A or C are not present</li> <li>• <u>Some degree of planning involved</u></li> </ul>
C - Lesser culpability:	<ul style="list-style-type: none"> <li>• Performed limited function under direction</li> <li>• Involved through coercion, intimidation or exploitation</li> <li>• <u>Little or no planning</u></li> <li>• Limited awareness or understanding of offence</li> <li>• </li> </ul>

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**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	<del>Goods or services obtained</del> above £200 or <del>goods/services up to £200</del> with <u>significant</u> additional harm to the victim or others
Category 2	<del>Goods or services obtained</del> up to £200 and Little or no <u>significant</u> additional harm to the victim or others

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**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
<b>Category 1</b> <u>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 factors</u>	<b>Starting point</b> High level community order  <b>Category range</b> Medium level community order -9 months custody	<b>Starting point</b> Low level community order  <b>Category range</b> Band C fine -High level community order	<b>Starting point</b> Band B fine  <b>Category range</b> Band A fine- Medium level community order
<b>Category 2</b>	<b>Starting Point</b> Medium level community order  <b>Category range</b> Low level community order-13 weeks custody	<b>Starting Point</b> Band C fine  <b>Category range</b> Band A fine – High level community order	<b>Starting Point</b> Band A fine  <b>Category range</b> Discharge –Band B fine

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.

In particular, **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.

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

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

#### 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:

- Offence motivated by factors including, but not limited to, the victim's 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
- Failure to comply with current orders
- Offence committed on licence
- Offences taken into consideration
- Established evidence of community/wider impact
- Theft committed shortly after arriving in the country
- Prevalence

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## **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:

- 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.

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## Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Remorse, ~~▼~~
- 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
- Offender experiencing exceptional financial hardship

**Deleted:** particularly where evidenced by voluntary reparation to the victim

**Deleted:** (where not linked to the commission of the offence)

## **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.

## Annex E

### 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. 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.

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

C - Lesser culpability:

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

**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
<b>Greater</b>	<b>Starting point</b> 26 weeks' custody  <b>Category range</b> High level community order -1 year's custody	<b>Starting point</b> 13 weeks' custody  <b>Category range</b> Medium level community order – 26 weeks' custody	<b>Starting point</b> Medium level community order  <b>Category range</b> Low level community order – High level community order
<b>Lesser</b>	<b>Starting point</b> High level community order  <b>Category range</b> Medium level community order- 13 weeks' custody	<b>Starting point</b> Medium level community order  <b>Category range</b> Low level community order – High level community order	<b>Starting point</b> Band B fine  <b>Category range</b> Discharge –Low level community order

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
- Theft committed shortly after arriving in the country

**Deleted:** In particular, **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.¶  
Where the defendant is dependent on or has a propensity to misuse drugs and there is sufficient prospect of success, a community order with a drug rehabilitation requirement under section 209 of the Criminal Justice Act 2003 may be a proper alternative to a short or moderate custodial sentence.¶  
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## Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Remorse
- 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
- Offender experiencing **exceptional** financial hardship

**Deleted:** (where not linked to the commission of the offence)

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

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

**STEP FOUR****Reduction for guilty pleas**

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

**STEP FIVE****Totality principle**

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

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

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

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

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

The court may also consider whether to make ancillary orders. These may include a deprivation order, 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.

## 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. 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.

CULPABILITY demonstrated by one or more of the following:	
A - High culpability:	
<ul style="list-style-type: none"> <li>▪ <u>A leading role where offending is part of a group activity</u></li> <li>▪ <u>Involvement of others through coercion, intimidation or exploitation</u></li> <li>▪ <u>Abuse of position of power or trust or responsibility</u></li> <li>▪ <u>Professional or sophisticated offence</u></li> <li>▪ <u>Advance knowledge that the stolen goods were to come from a domestic burglary or a robbery</u></li> <li>▪ <u>Possession of recently stolen goods</u></li> </ul>	
B - Medium culpability:	
<ul style="list-style-type: none"> <li>▪ <u>Other cases where characteristics for categories A or C are not present</u></li> <li>▪ <u>A significant role where offending is part of a group activity</u></li> <li>▪ <u>Offender acquires goods for resale</u></li> <li>▪ <u>Some degree of planning involved</u></li> </ul>	
C - Lesser culpability:	
<ul style="list-style-type: none"> <li>▪ <u>Performed limited function under direction</u></li> <li>▪ <u>Involved through coercion, intimidation or exploitation</u></li> <li>▪ <u>Little or no planning/sophistication</u></li> <li>▪ <u>Limited awareness or understanding of offence</u></li> <li>▪ <u>Goods acquired for offender's own personal use</u></li> </ul>	

**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:** <#>Sophisticated nature of offence/significant planning ¶

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**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¶

**Deleted:** Opportunistic offence;

**Deleted:** Low value

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:

<u>Property stolen from a domestic burglary or a robbery</u> <u>Items stolen of an economic, sentimental or personal value</u> <u>Metal theft causing disruption to infrastructure</u> <u>Damage to heritage assets</u> <u>Items stolen which may endanger life</u>	
<b>Harm</b>	
<u>Category 1</u>	<u>Very high value goods stolen (above £50,000) or High value with significant additional harm to the victim or others</u>
<u>Category 2</u>	<u>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</u>
<u>Category 3</u>	<u>Medium value goods stolen (£500 to £5,000) and no additional harm or Low value with significant additional harm to the victim or others</u>
<u>Category 4</u>	<u>Low value goods stolen (up to £500) and Little or no significant additional harm to the victim or others</u>

**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
<b>Category 1</b> <u>Where the value greatly exceeds £50,000, it may be appropriate to move outside the identified range. Adjustment should be made for any significant</u>	<b>Starting point</b> 6 years' custody  <b>Category range</b> 3-8 years' custody	<b>Starting point</b> 3 years' custody  <b>Category range</b> 1-4 years' custody	<b>Starting point</b> 1 year's custody  <b>Category range</b> 26 weeks' –2 years' custody

<u>additional harm factors.</u>			
<b>Category 2</b>	<b>Starting point</b> 3 years' custody  <b>Category range</b> 1-4 years' custody	<b>Starting point</b> 1 year's custody  <b>Category range</b> 26 weeks'-2 years 6 months' custody	<b>Starting point</b> 13 weeks's custody  <b>Category range</b> High level community order-1 year's custody
<b>Category 3</b>	<b>Starting point</b> 36 weeks' custody  <b>Category range</b> 13 weeks'-3 years' custody	<b>Starting point</b> High level community order  <b>Category range</b> Medium level community order-1 year's custody	<b>Starting point</b> Medium level community order  <b>Category range</b> Band C fine -13 weeks' custody
<b>Category 4</b>	<b>Starting point</b> High level community order  <b>Category range</b> Medium level community order – 1 year's custody	<b>Starting point</b> Medium level community order  <b>Category range</b> Band B fine –13 weeks' custody	<b>Starting point</b> Low level community order  <b>Category range</b> Discharge -high level community order

The court should then consider further adjustment for any aggravating or mitigating factors. The table on the next page 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.

In particular, **relevant recent convictions** may justify an upward adjustment, including outside the custody 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.

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

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

## 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
- Theft committed shortly after arriving in the country

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## Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Remorse
- Offender cooperated with the investigation which led to the identification of other offenders.
- 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

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

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

**STEP FOUR****Reduction for guilty pleas**

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

**STEP FIVE****Totality principle**

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

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

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

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

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

The court may also consider whether to make ancillary orders. These may include a deprivation order, 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.

## Annex G

### 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. 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.

CULPABILITY demonstrated by one or more of the following:	
A - High culpability:	
<ul style="list-style-type: none"> <li>▪ A leading role where offending is part of a group activity</li> <li>▪ Involvement of others through coercion, intimidation or exploitation</li> <li>▪ Significant steps taken to conceal identity and/or avoid detection</li> <li>▪ Sophisticated nature of offence/significant planning</li> <li>▪ <u>Circumstances suggest offender equipped for particularly serious offence</u></li> </ul>	
B - Medium culpability:	
<ul style="list-style-type: none"> <li>▪ A significant role where offending is part of a group activity</li> <li>▪ <u>All other cases where characteristics for categories A or C are not present</u></li> </ul>	
C - Lesser culpability:	
<ul style="list-style-type: none"> <li>▪ Involved through coercion, intimidation or exploitation</li> <li>▪ Limited awareness or understanding of offence</li> <li>▪ <u>Little or no planning</u></li> </ul>	

**Deleted:** , for example, possession of a magnetic device to remove security tags

**Deleted:** Going

**Deleted:** robbery or burglary

**Deleted:** <#>Some level of planning and sophistication used in the offence, ¶

**Deleted:** Opportunistic offence;

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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.

**Harm**

**Greater harm:**

Greater harm is indicated by the possession of any of the following,

The possession of items to facilitate:

Theft which would affect a large number of people

Theft which may endanger life

Theft of high value items

Theft of heritage assets

**Lesser harm**

All other cases.

**Deleted:** Possession of items(s) which have the potential to facilitate a theft affecting a large number of victims, for example, items intended to be used to steal metal from railway lines.¶  
Possession of item(s) which have the potential to facilitate a theft involving high value goods or large sums of money, for example, a master key for high value motor vehicles.¶

## 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
<b>Greater</b>	<b>Starting point</b> 1 year's custody  <b>Category range</b> 26 weeks' -18 months' custody	<b>Starting point</b> 26 weeks' custody  <b>Category range</b> High level community order – 1 year's custody	<b>Starting point</b> High level community order  <b>Category range</b> Medium level community order – 26 weeks' custody
<b>Lesser</b>	<b>Starting point</b> 26 weeks' custody  <b>Category range</b> High level community order-1 year's custody	<b>Starting point</b> High level community order  <b>Category range</b> Medium level community order – 26 weeks' custody	<b>Starting point</b> Band B fine  <b>Category range</b> Discharge – Medium level community order

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.

In particular, **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.

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

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

### **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
- Offence committed shortly after arriving in the country

#### **Factors reducing seriousness or reflecting personal mitigation**

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

**Deleted:** (where linked to the commission of the offence)

### **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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