

Overarching principles

Seriousness

This guideline has two functions:

- 1.** For the sentencing of offenders where there is no offence specific sentencing guideline. This guideline provides principles to assist the court in arriving at a just and proportionate sentence.
- 2.** To amplify and explain the principles and factors used in offence specific Sentencing Council guidelines

This guideline applies to offenders aged 18 and over. When sentencing those under 18 refer to the Sentencing children and young people definitive guideline.

STEP ONE

Determining the offence category

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

CULPABILITY

- **The characteristics set out below are indications of the level of culpability that may attach to the offender’s conduct; the court should balance these characteristics to reach a fair assessment of the offender’s overall culpability in the context of the circumstances of the offence.**
- **The relevance of factors will vary depending on the type of offending. Where a characteristic is inherent in the offence, the mere presence of that characteristic will not be determinative of the level of culpability.**
- **This model of assessing culpability will not be applicable to all offences**

A - High Culpability

The offender has committed the offence intentionally or has acted with a total disregard for the foreseeable consequences of those actions.	Where intention is a necessary element of the offence, intention in itself will not be sufficient for a finding of high culpability. The foreseeability of the consequences may be indicated by warnings or by previous incidents
A substantial degree of planning / premeditation	<p>These factors could all be indicators of intention but are likely to represent a level of intention over and above that inherent in the offence.</p> <p>For the purposes of targeting:</p> <p>The vulnerability (or presumed vulnerability) of the victim will be relevant where it is over and above that inherent in the offence (for example, where an offence can only be committed against a child, the fact that the victim is a child would not in itself indicate particular vulnerability – but the fact that the child was very young might do so). Vulnerability will normally be indicated by the personal characteristics of the victim (for example age or disability) but may be indicated by circumstances (for example targeting a victim who is incapable through drink or targeting a victim who is significantly smaller or weaker than the offender).</p>
A leading role when acting with others	
Involvement of others through pressure or influence	
Deliberate maximising of the harm (physical, psychological or financial) caused by the offence - including maximising the unlawful benefit to the offender	
Targeting of victim(s) on the basis of particular vulnerability or presumed vulnerability.	
The use of excessive force including the use of a weapon (where it is not an element of the offence)	
Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity	
Abuse of power or trust	Where not an element of the offence

B - Medium Culpability	
<p>Cases falling between high and lower because:</p> <ul style="list-style-type: none"> • factors are present in high and lower which balance each other out and/or • the offender's culpability falls between the factors as described in high and lower 	<p>A finding of medium culpability will often be based on an absence of characteristics which would indicate high or lower culpability or by a balancing of the factors.</p> <p>Sentencers should not be deterred from making a finding of medium culpability by the absence of an identifiable medium culpability factor.</p>
A significant role when acting with others	
C - Lower Culpability	
Offender had the lowest level of intention or knowledge commensurate with the commission of the offence.	Depending on the elements of the offence this may represent negligence, recklessness or an unplanned/ impulsive intention.
Little or no planning or premeditation	The fact that an offence was committed on the spur of the moment will not always indicate low culpability
The offender did not intend to cause more than minimal harm or loss and it would not have been obvious to the offender that harm or loss would result from the offending.	Where a level of intention or recklessness is inherent in the offence, this factor will apply to an offender who only just exceeds the minimum level required by the elements of the offence.
Minor role when acting with others.	These factors may be related but will not necessarily always go together.
Involved through coercion, intimidation or exploitation	
Limited awareness or understanding of the extent of criminal activity	
Acted in defence of self or others (where not amounting to a defence)	This factor would apply where an offender's actions only just exceed that which would have amounted to a defence.
The offender's responsibility was substantially reduced by mental disorder,* learning disability or lack of maturity	*Little, if any weight should be give to this factor where an offender exacerbates a mental disorder by voluntarily abusing drugs or alcohol or by voluntarily failing to follow medical advice

HARM	
<p>There may be primary and secondary victims of an offence and, depending on the offence, victims may include one or more individuals, a community, the general public, the state, the environment and/or animal(s). In some cases there may not be an identifiable victim.</p>	
Category 1 – High harm	
Physical and/or psychological harm caused to the victim(s) which greatly exceeds that which is in the definition of in the offence	<p>The highest category will be reserved for those cases where the harm caused greatly exceeds that which is a basic element of the offence.</p> <p>An assessment of harm should generally be made from the viewpoint of the victim(s) and may include direct harm and consequential harm.</p>
Material or financial loss that causes severe hardship or severe distress to the victim(s)	
Major damage/ disruption to: public services (including the administration of justice); infrastructure or the economy.	
High level of gain to the offender	Where the offence is motivated by financial reward, regardless of whether there are identifiable victims, a large gain will represent high harm
Category 2 – Medium harm	
Significant physical and/or psychological harm caused to the victim(s) which exceeds the minimum that is inherent in the offence	<p>This category could represent a very wide range of harm – anything that falls short of the highest level of harm envisaged by the offence but exceed the minimum. There may be significant gradations within this category.</p>
Material or financial loss that causes hardship or distress to the victim(s)	
Significant damage/ disruption to: public services (including the administration of justice); infrastructure or the economy.	
Category 3 – Lesser harm	
Physical and/ or psychological harm that only just meets the level inherent in the offence	<p>This category represents harm which only just meets the criteria for the offence.</p> <p>Where high or medium harm was intended but did not eventuate through the intervention of others or by good fortune, harm should normally be assessed according to the harm intended.</p>
Material or financial loss that causes minimal hardship or distress to the victim(s)	
Minimal damage/ disruption to public services (including the administration of justice), infrastructure or the economy.	
Risk of harm	
<p>Dealing with a risk of harm involves consideration of both the likelihood of harm occurring and the extent of it if it does. Risk of harm is less serious than the same actual harm. Where the offence has caused risk of harm but no (or less) actual harm the normal approach is to move down to the next category of harm. This may not be appropriate if either the likelihood or extent of potential harm is particularly high.</p>	

STEP TWO
Starting point and adjustment of sentence

Starting Point

Having assessed the level of harm and culpability at step one the court will have reached a preliminary assessment of the seriousness of the case relative to the offence.

Where there is not definitive sentencing guideline, to arrive at a starting point the court should take account of all of the following (if they apply):

- the maximum sentence (and if appropriate minimum sentence) for the offence;
- definitive sentencing guidelines for analogous offences; and
- sentencing judgments of the Court of Appeal (Criminal Division) for the offence.

When considering definitive guidelines for analogous offences the court must make adjustments for any differences in the statutory maximum sentence and in the elements of the offence.

The court should consider which of the five purposes of sentencing,

- *punishment,*
- *crime reduction,*
- *reform and rehabilitation,*
- *public protection, and*
- *reparation*

it is seeking to achieve through the sentence that is imposed. More than one purpose might be relevant and the importance of each must be weighed against the particular offence and offender characteristics when determining sentence.

In broad terms, the sentences available in increasing order of severity are:

- Discharge
- Fine [see appendix A below for further information and factors to consider]
- Community Order [see appendix B below for further factors to consider]
- Custody

The cost of a proposed sentence should not be considered when deciding sentence in an individual case. However, where there is sufficient evidence about the relative probable effectiveness of two or more possible sentences, this should be taken into account by the court.

Adjustment of sentence

Below is a **non-exhaustive** list of factors that may make the offence more or less serious.

- Identify whether a combination of these or other relevant factors should result in any upward or downward adjustment from the sentence arrived at so far.
- The presence of an aggravating factor that is an integral part of the offence being sentenced cannot be used as justification for increasing the sentence further.

Care should be taken to avoid double counting factors already taken into account in assessing culpability or harm or those inherent in the offence

Factors increasing seriousness	
<i>Statutory aggravating factors</i>	
<p>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</p>	<p>Previous convictions are taken into account after the initial seriousness of the offence has been assessed. Therefore an offender will be sentenced primarily according to the seriousness of the current offence – recent and relevant previous convictions may then increase the severity of the sentence.</p> <p>Exceptionally in cases involving significant persistent previous offending of a like nature, the community and custody thresholds may be crossed even though the offence otherwise warrants a lesser sentence. Any custodial must be kept to the necessary minimum.</p>
<p>Offence committed whilst on bail</p>	
<p>Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity</p>	<p>Where an aggravated form of an offence is charged that factor will be inherent in the offence and should not be used to increase the sentence at this stage.</p> <p>Where an aggravated form of the offence is available but the offender is convicted of the simple offence it is not permissible to increase the sentence based solely on the presence of that factor.</p>
<p><i>Other aggravating factors: (factors are not listed in any particular order)</i></p>	
<p>Commission of offence whilst under the influence of alcohol or drugs</p>	<p>Voluntary intoxication increases the seriousness of the offence</p>

Planning of an offence	The greater the degree of planning the more the sentence will be increased. In most situations this will be a factor taken in to account at step one – care should be taken to avoid double counting.
'Professional' offending	This factor may be related to planning of an offence (see above) - the same considerations apply.
Offence involved use of a weapon	The use of a weapon has relevance to the culpability of the offender and to the harm or for potential harm. In most situations this will be a factor taken in to account at step one – care should be taken to avoid double counting.
Offence was committed as part of a group or gang	The mere membership of a group or gang should not be used to increase the sentence, but where the offence was committed as part of a group or gang this will generally make it more serious.
Commission of the offence for financial gain (where this is not inherent in the offence itself)	Where an offence has been committed wholly or in part for financial gain or the avoidance of cost this will increase the seriousness. An example would be failing to comply with a regulation in order to avoid costs.
High level of profit from the offence	In most situations this will be a factor taken in to account at step one – care should be taken to avoid double counting.
Deliberate and gratuitous violence or damage to property, over and above what is needed to carry out the offence	In most situations this will be a factor taken in to account at step one – care should be taken to avoid double counting.
Failure to respond to warnings or concerns expressed by others about the offender's behaviour	Where an offender has had the benefit of warnings or advice about their conduct but has failed to heed it this would make the offence more serious.
Victim was particularly vulnerable because of personal circumstances	An offence is more serious if the victim is vulnerable because of factors such as age, illness or disability (unless this is inherent in the offence).
Victim was providing a public service or performing a public duty	Examples include but are not limited to: police, fire or ambulance personnel, prison staff, medical staff, and public transport staff. This reflects that fact that people in public facing roles are more exposed and consequently vulnerable.
Other(s) put at risk of harm by the offending	Where there is harm to other(s) not taken in account at step one, this will make the offence more serious

Offence committed in the presence of others (especially children)	This takes account of the distress that may be caused to those who witnessed the offence.
Actions after the event (including but not limited to attempts to cover up/ conceal evidence)	Unless this conduct is the subject of separate charges, it should be taken into account to make the offence more serious.
Blame wrongly placed on other(s)	Where the investigation has been hindered and/or other(s) have suffered as a result of being wrongly blamed by the offender, this will make the offence more serious.
Offence committed on licence or post sentence supervision or while subject to court order(s)	
Offence committed in a domestic setting (refer to the <i>Domestic abuse</i> guideline)	
Established evidence of community/ wider impact	This factor should only be used to increase the sentence where there is wider harm not already taken into account at step one. For issues of prevalence see the separate guidance below.

Prevalence

*The prevalence of particular types of offending and the need to deter the offender and others from committing similar crimes are taken into account when sentence starting points and ranges are determined for offence guidelines. A sentence should be increased on the grounds of prevalence **only exceptionally** and where there is statistical or other independent evidence to show that a particular type of offending behaviour is currently more prevalent in a local area and the court is satisfied that there is a compelling need to treat the offence more seriously than elsewhere.*

Factors reducing seriousness or reflecting personal mitigation (factors are not listed in any particular order)	
No previous convictions or no relevant/recent convictions	Where this is a first time offence or where the offender has no recent record for offending of a like nature, the sentence will normally be reduced.
Good character and/or exemplary conduct	This factor may apply whether or not the offender has previous convictions. Evidence that an offender has demonstrated positive good character through, for example, charitable works or public service will normally reduce the sentence. However, this factor is less likely to be relevant where the offending is very serious and where an offender has used their good character to facilitate the offending it could be treated as an aggravating factor.

Remorse	The factor will carry more weight where there is some evidence to demonstrate that the remorse is genuine (such as voluntary reparations made to the victim)
Self-reporting	Where an offender has self-reported to the authorities, particularly in circumstances where the offence may otherwise have gone undetected, this would reduce the sentence.
Cooperation with the investigation/ early admissions	Assisting or cooperating with the investigation and /or making pre-court admissions eases the effect on victims and witnesses and saves valuable police time justifying a reduction in sentence (separate from any guilty plea reduction at step four)
Age and/or lack of maturity	This can affect both the offender's responsibility for the offence and the affect of the sentence on the offender (for example an immature offender may find it more difficult to cope with custody or to complete a community order). Either or both of these considerations may justify a reduction in the sentence.
Sole or primary carer for dependent relatives	This factor is particularly relevant where an offender is on the cusp of custody or where the suitability of a community order is being considered. For offenders on the cusp of custody, imprisonment should not be imposed where there would be a impact on dependants which would make a custodial sentence disproportionate to achieving the aims of sentencing. For more serious offences where a substantial period of custody is appropriate, this factor will carry less weight.
Serious medical conditions requiring urgent, intensive or long-term treatment	Such medical conditions will affect the impact that a sentence has on the offender and may lead to a reduction in sentence.
Mental disorder or learning disability	This can affect both the offender's responsibility for the offence and the affect of the sentence on the offender. Where it has been taken into account at step one as reducing culpability, it should not be counted again for that purpose but may still be taken into account as a factor that may reduce the sentence
Determination and /or demonstration of steps having been taken to address addiction or offending behaviour.	This factor will be particularly relevant where the court is considering a sentence that focuses on rehabilitation.

STEP THREE

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

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

STEP FOUR

Reduction for guilty pleas

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

STEP FIVE

Dangerousness

Where the offence is listed in Schedule 15 and/or Schedule 15B of the Criminal Justice Act 2003

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to impose a life sentence (section 224A or section 225) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

STEP 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 in accordance with the *Offences Taken into Consideration and Totality guideline*.

STEP SEVEN

Compensation and ancillary orders

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

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

STEP EIGHT

Reasons

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

STEP NINE

Consideration for time spent on bail

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

Appendix A

The approach to the assessment of fines

Introduction

The amount of a fine must reflect the seriousness of the offence (Criminal Justice Act (“CJA”) 2003, s.164(2)). The court must also take into account the financial circumstances of the offender; this applies whether it has the effect of increasing or reducing the fine (CJA 2003, ss.164(3) and 164(4)).

The aim is for the fine to have an equal impact on offenders with different financial circumstances; it should be a hardship but should not force the offender below a reasonable ‘subsistence’ level. Normally a fine should be of an amount that is capable of being paid within 12 months though there may be exceptions to this.

The guidance in this section aims to establish a clear, consistent and principled approach to the assessment of fines that will apply fairly in the majority of cases. However, it is impossible to anticipate every situation that may be encountered and in each case the court will need to exercise its judgement to ensure that the fine properly reflects the seriousness of the offence and takes into account the financial circumstances of the offender.

Fine bands

For the purpose of the offence guidelines, a fine is usually based on one of three bands (A, B or C). The selection of the relevant fine band, and the position of the individual offence within that band, is determined by the seriousness of the offence. In some cases fine bands D – F may be used even where the community or custody threshold have been passed.

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

Definition of relevant weekly income

The seriousness of an offence determines the choice of fine band and the position of the offence within the range for that band. The offender’s financial circumstances are taken into account by expressing that position as a proportion of the offender’s relevant weekly income.

Where:

- an offender is in receipt of income from employment or is self-employed **and**
- that income is **more than £120** per week after deduction of tax and national insurance (or equivalent where the offender is self-employed),

– the **actual income is the relevant weekly income.**

Where:

- an offender's only source of income is state benefit (including where there is relatively low additional income as permitted by the benefit regulations) **or**
- the offender is in receipt of income from employment or is self-employed but the amount of income after deduction of tax and national insurance is **£120 per week or less,**

– the **relevant weekly income is deemed to be £120.**

In calculating relevant weekly income no account should be taken of tax credits, housing benefit, child benefit or similar.

No reliable information

Where an offender has failed to provide information, or the court is not satisfied that it has been given sufficient reliable information, it is entitled to make such determination as it thinks fit regarding the financial circumstances of the offender (CJA 2003, s.164(5)). Any determination should be clearly stated on the court records for use in any subsequent variation or enforcement proceedings. In such cases, a record should also be made of the applicable fine band and the court's assessment of the position of the offence within that band based on the seriousness of the offence.

Where there is no information on which a determination can be made, the court should proceed on the basis of an **assumed relevant weekly income of £440.** (This is derived from national median pre- tax earnings; a gross figure is used as, in the absence of financial information from the offender, it is not possible to calculate appropriate deductions.)

Where there is some information that tends to suggest a significantly lower or higher income than the recommended £440 default sum, the court should make a determination based on that information.

A court is empowered to remit a fine in whole or part if the offender subsequently provides information as to means (CJA 2003, s.165(2)). The assessment of offence seriousness and, therefore, the appropriate fine band and the position of the offence within that band are not affected by the provision of this information.

Assessment of financial circumstances

While the initial consideration for the assessment of a fine is the offender's relevant weekly income, the court is required to take account of the offender's financial circumstances including assets more broadly.

An offender's financial circumstances may have the effect of increasing or reducing the amount of the fine; however, they are not relevant to the assessment of offence seriousness. They should be considered separately from the selection of the appropriate fine band and the court's assessment of the position of the offence within the range for that band.

Out of the ordinary expenses

In deciding the proportions of relevant weekly income that are the starting points and ranges for each fine band, account has been taken of reasonable living expenses.

Accordingly, no further allowance should normally be made for these. In addition, no allowance should normally be made where the offender has dependants.

Outgoings will be relevant to the amount of the fine only where the expenditure is out of the ordinary and substantially reduces the ability to pay a financial penalty so that the requirement to pay a fine based on the standard approach would lead to undue hardship.

Unusually low outgoings

Where the offender's living expenses are substantially lower than would normally be expected, it may be appropriate to adjust the amount of the fine to reflect this. This may apply, for example, where an offender does not make any financial contribution towards his or her living costs.

Savings

Where an offender has savings these will not normally be relevant to the assessment of the amount of a fine although they may influence the decision on time to pay.

However, where an offender has little or no income but has substantial savings, the court may consider it appropriate to adjust the amount of the fine to reflect this.

Household has more than one source of income

Where the household of which the offender is a part has more than one source of income, the fine should normally be based on the income of the offender alone.

However, where the offender's part of the income is very small (or the offender is wholly dependent on the income of another), the court may have regard to the extent of the household's income and assets which will be available to meet any fine imposed on the offender (*R v Engen* [2004] EWCA Crim 1536 (CA)).

Potential earning capacity

Where there is reason to believe that an offender's potential earning capacity is greater than his or her current income, the court may wish to adjust the amount of the fine to reflect this (*R v Little* (unreported) 14 April 1976 (CA)). This may apply, for example, where an unemployed offender states an expectation to gain paid employment within a short time. The basis for the calculation of fine should be recorded in order to ensure that there is a clear record for use in variation or enforcement proceedings.

High income offenders

Where the offender is in receipt of very high income, a fine based on a proportion of relevant weekly income may be disproportionately high when compared with the seriousness of the offence. In such cases, the court should adjust the fine to an appropriate level; as a general indication, in most cases the fine for a first time offender pleading not guilty should not exceed 75 per cent of the maximum fine. In the case of fines which are unlimited the court should decide the appropriate level with the guidance of the legal adviser.

Approach to offenders on low income

An offender whose primary source of income is state benefit will generally receive a base level of benefit (for example, jobseeker's allowance, a relevant disability benefit or income support) and may also be eligible for supplementary benefits depending on his or her individual circumstances (such as child tax credits, housing benefit, council tax benefit and similar). In some cases these benefits may have been replaced by Universal Credit.

If relevant weekly income were defined as the amount of benefit received, this would usually result in higher fines being imposed on offenders with a higher level of need; in most circumstances that would not properly balance the seriousness of the offence with the financial circumstances of the offender. While it might be possible to exclude from the calculation any allowance above the basic entitlement of a single person, that could be complicated and time consuming.

Similar issues can arise where an offender is in receipt of a low earned income since this may trigger eligibility for means related benefits such as working tax credits and housing benefit depending on the particular circumstances. It will not always be possible to determine with any confidence whether such a person's financial circumstances are significantly different from those of a person whose primary source of income is state benefit.

For these reasons, a simpler and fairer approach to cases involving offenders in receipt of low income (whether primarily earned or as a result of benefit) is to identify an amount that is deemed to represent the offender's relevant weekly income.

While a precise calculation is neither possible nor desirable, it is considered that an amount that is approximately half-way between the base rate for jobseeker's allowance and the net weekly income of an adult earning the minimum wage for 30 hours per week represents a starting point that is both realistic and appropriate; this is currently **£120**. The calculation is based on a 30 hour working week in recognition of the fact that many of those on minimum wage do not work a full 37 hour week and that lower minimum wage rates apply to younger people.

With effect from 1 October 2014, the minimum wage is £6.50 per hour for an adult aged 21 or over. Based on a 30 hour week, this equates to approximately £189 after deductions for tax and national insurance. To ensure equivalence of approach, the level of jobseeker's allowance for a single person aged 18 to 24 has been used for the purpose of calculating the mid point; this is currently £57.90. The figure will be updated in due course in accordance with any changes to benefit and minimum wage levels.

Offence committed by an organisation

Where an offence is committed by an organisation, guidance on fines can be found in the [environmental offences guideline](#).

See the [Criminal Practice Direction CPD XIII Listing Annex 3](#) for directions on dealing with cases involving very large fines in the magistrates' court.

Maximum fines

A fine must not exceed the statutory limit. Where this is expressed in terms of a 'level', the maxima are:

Level 1	£200
Level 2	£500
Level 3	£1,000
Level 4	£2,500
Level 5	Unlimited (for offences committed after 13 March 2015)*

*For offences committed before 13 March 2015 the level 5 maximum is £5,000

See the [Criminal Practice Direction XIII Listing Annex 3](#) for directions on dealing with cases involving very large fines in magistrates' courts.

Multiple offences

Where an offender is to be fined for two or more offences that arose out of the same incident, it will often be appropriate to impose on the most serious offence a fine which reflects the totality of the offending where this can be achieved within the maximum penalty for that offence. 'No separate penalty' should be imposed for the other offences.

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

Imposition of fines with custodial orders

A fine and a custodial sentence may be imposed for the same offence although there will be few circumstances in which this is appropriate, particularly where the custodial sentence is to be served immediately. One example might be where an offender has profited financially from an offence but there is no obvious victim to whom compensation can be awarded. Combining these sentences is most likely to be appropriate only where the custodial sentence is short and/or the offender clearly has, or will have, the means to pay.

Care must be taken to ensure that the overall sentence is proportionate to the seriousness of the offence and that better off offenders are not able to 'buy themselves out of custody'.

Payment of fines

A fine is payable in full on the day on which it is imposed. The offender should always be asked for immediate payment when present in court and some payment on the day should be required wherever possible.

Where that is not possible, the court may, in certain circumstances, require the offender to be detained (see section 82 of the Magistrates' Courts Act 1980 for restrictions on the power to impose imprisonment on default). More commonly, a court will allow payments to be made over a period set by the court:

- a. if periodic payments are allowed, the fine should normally be payable within a maximum of 12 months.

- b. compensation should normally be payable within 12 months. However, in exceptional circumstances it may be appropriate to allow it to be paid over a period of up to three years.

Where fine bands D, E and F apply, it may be appropriate for the fine to be of an amount that is larger than can be repaid within 12 months. In such cases, the fine should normally be payable within a maximum of 18 months (band D) or two years (bands E and F).

When allowing payment by instalments **payments should be set at a realistic rate taking into account the offender's disposable income.** The following approach may be useful:

Net weekly income	Suggested starting point for weekly payment
£60	£5
£120	£10
£200	£25
£300	£50
£400	£80

If the offender has dependants or larger than usual commitments, the weekly payment is likely to be decreased.

The payment terms must be included in any collection order made in respect of the amount imposed.

Appendix B

In the following circumstances, a non-custodial sentence is most unlikely to be appropriate and a custodial sentence in excess of two years is likely to be appropriate:

- (i) where serious physical, psychological, financial or social harm was intended, whether or not the harm was actually inflicted; or*
- (ii) where death or serious physical, psychological or social harm was caused by an offender who acted without regard to the harm that was likely to be occasioned.*

Unless there are offender mitigation factors that would suggest that a community sentence would be more suitable, a short custodial sentence is likely to be a more appropriate sentence than a community order where one or more of the following characteristics is present:

- (i) the seriousness of the offence is held to require punishment of a level that only imprisonment can provide;*
- (ii) the offender is a seriously persistent offender;*
- (iii) the offender has shown unwillingness to comply with supervision in the community previously and there is evidence to suggest that the offender would not comply on this occasion;*
- (iv) the offender has committed an offence in relation to which a custodial sentence generally would be regarded as the right option, for example in response to immigration offences or perverting the course of justice.*

Even where the custody threshold has been crossed, a community order is likely to be the most appropriate sentence where one or more of the following characteristics is present:

- (i) no serious physical, psychological, financial or social harm was inflicted and no such harm was intended or risked by the offender's disregard for the likely outcome of his actions;*
- (ii) the offender has not committed an offence within one of the categories for which a custodial sentence generally would be regarded as inevitable;*
- (iii) community order requirements are more likely to be effective at addressing the offending behaviour and preventing re-offending;*
- (iv) a significant purpose of the sentence is reform or rehabilitation;*
- (v) the primary purpose of the sentence is punishment but rehabilitative interventions are also needed;*
- (vi) the court considers that a community order can meet the treatment, rehabilitation or reparation needs that have been identified;*
- (vii) offender mitigation factors suggest that a community order would be the most proportionate response in all the given circumstances of an individual case.*

A community sentence should not be ruled out as a suitable disposal solely on the grounds that the offender has failed to complete a community sentence in the past. Careful consideration should be given to the reasons for failure and to the likelihood of compliance with the community order requirements proposed on this occasion.

If considering a community or custodial sentence refer also to the *Imposition of community and custodial sentences* definitive guideline.

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