

# Overarching principles

## Seriousness

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**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.**

**Sentencing offences for which there is no definitive sentencing guideline**

**STEP ONE**

Where there is no definitive sentencing guideline, to arrive at a preliminary sentence the court should take account of all of the following (if they apply):

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

Where possible the court should follow the stepped approach of sentencing guidelines to arrive at the sentence.

- The seriousness of the offence is assessed by considering the culpability of the offender and the harm caused by the offending.
- The initial assessment of harm and culpability should take no account of plea or previous convictions.

Once a provisional sentence is arrived at the court should take into account factors that may make the offence more serious and factors which reduce seriousness or reflect personal mitigation.

**STEP TWO**

**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.
- Refer to the *Imposition of community and custodial sentences* definitive guideline when considering a community or custodial sentence.

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

<b>Factors increasing seriousness</b>	
<i>Statutory aggravating factors</i>	
<p>Previous convictions, having regard to a) the <b>nature</b> of the offence to which the conviction relates and its <b>relevance</b> to the current offence; and b) the <b>time</b> that has elapsed since the conviction</p>	<p>Previous convictions are taken into account <b>after</b> the initial seriousness of the offence has been assessed. Therefore an offender will be sentenced primarily according to the seriousness of the current offence – <b>recent and relevant</b> previous convictions may then increase the severity of the sentence.</p> <p><b>Exceptionally</b> in cases involving <b>significant persistent</b> previous offending of a like nature, the community and custody thresholds <b>may</b> be crossed even though the offence otherwise warrants a lesser sentence. Any custodial must be kept to the necessary minimum.</p> <p>See further guidance below*</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>
<p>Planning of an offence</p>	<p>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</p>

	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 <b>offence was committed as part</b> 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.
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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.*

<b>Factors reducing seriousness or reflecting personal mitigation</b> (factors are not listed in any particular order)	
No previous convictions <b>or</b> 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)

<p>Self-reporting</p>	<p>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.</p>
<p>Cooperation with the investigation/ early admissions</p>	<p>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)</p>
<p>Age and/or lack of maturity</p>	<p>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.</p>
<p>Sole or primary carer for dependent relatives</p>	<p>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 an 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.</p>
<p>Serious medical conditions requiring urgent, intensive or long-term treatment</p>	<p>Such medical conditions will affect the impact that a sentence has on the offender and may lead to a reduction in sentence.</p>
<p>Determination and /or demonstration of steps having been taken to address addiction or offending behaviour.</p>	<p>This factor will be particularly relevant where the court is considering a sentence that focuses on rehabilitation.</p>
<p>Involved through coercion, intimidation or pressure</p>	<p>Where an offender has been subject to pressure from another this may reduce culpability.</p>
<p>Minor role under direction when acting with others</p>	<p>Where an offender plays a minor role and is not involved in the planning of an offence this is likely to indicate a low level of culpability.</p>
<p>Limited awareness or understanding of the offence</p>	<p>An offender who playing a minor role and acting under the direction of others may not have understood the full scope of the offending and the harm caused thereby.</p>

<p>Little or no harm intended or contemplated</p>	<p>Where an offender intended much less harm than actually occurred this may reduce the seriousness of the offending.</p>
<p>Mental disorder or learning disability</p>	<p>A mental disorder or learning disability can affect both the offender's responsibility for the offence and the effect of the sentence on the offender. Where this factor 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.</p> <p>Little, if any weight should be given to this factor as reducing responsibility where an offender exacerbates a mental disorder by voluntarily abusing drugs or alcohol or by voluntarily failing to follow medical advice</p>

**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.

**Guidance on the Use of Previous Convictions**

The following guidance should be considered when seeking to determine the degree to which previous convictions should aggravate sentence:

Section 143 of the Criminal Justice Act states that:

*In considering the seriousness of an offence (“the current offence”) committed by an offender who has one or more previous convictions, the court must treat each previous conviction as an aggravating factor if (in the case of that conviction) the court considers that it can reasonably be so treated having regard, in particular, to—*

*(a) the nature of the offence to which the conviction relates and its relevance to the current offence, and*

*(b) the time that has elapsed since the conviction.*

- (i) Previous convictions are considered at step two in the Council’s offence-specific guidelines. Accordingly, they generally affect the determination of sentence *within* the category range selected at step one. They do not determine which guideline category range is appropriate.
- (ii) In cases involving significant persistent offending, the community and custody thresholds may be crossed even though the current offence normally warrants a lesser sentence. Any custodial sentence imposed to reflect persistent offending rather than the current offence should be kept to the necessary minimum.
- (iii) The primary significance of previous convictions is the extent to which they indicate trends in offending behaviour and possibly the offender’s response to earlier sentences;
- (iv) Previous convictions are normally relevant to the current offence when they are of a similar type;
- (v) Previous convictions of a type different from the current offence *may* be relevant where they are an indication of persistent offending;
- (vi) Numerous and frequent previous convictions might indicate an underlying problem (for example, an addiction) that could be addressed more effectively in the community and will not necessarily indicate that a custodial sentence is necessary;

- (vii) If the offender received a noncustodial disposal for the previous offence, a court should not necessarily move to a custodial sentence for the fresh offence;
- (viii) The aggravating effect of relevant previous convictions reduces with the passage of time; older convictions are less relevant to the offender's culpability for the current offence and less likely to be predictive of future offending.
- (ix) Where the previous offence is particularly old it will have little or no relevance for the current sentencing exercise;
- (x) Where there has been a significant gap between previous and current convictions (which indicates an attempt at desistance) the aggravating effect of the previous offending on sentencing will diminish.
- (xi) Where the current offence is significantly less serious than the previous conviction (suggesting a decline in the gravity of offending), the previous conviction may carry less weight.
- (xii) When considering the totality of prior offending a court should take a rounded view of the prior crimes and not simply sum each individual crime.