

# Failure to Disclose Information about Acts of Terrorism

Terrorism Act 2000 (section 38B)

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Triable either way  
Maximum: 5 years' custody

Offence range: 6 months' – 5 years' custody

This guideline applies only to offenders aged 18 and older

**STEP ONE**  
**Determining the offence category**

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

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

<b>Culpability</b> demonstrated by one or more of the following:	
A	<ul style="list-style-type: none"> <li>Failed to pass on information which could have prevented an act of terrorism</li> </ul>
B	<ul style="list-style-type: none"> <li>Failed to pass on information which could have secured the apprehension, prosecution or conviction of a person associated with terrorism</li> </ul>

<b>Harm</b>	
The court should consider the factors set out below to determine the level of harm that has been <b>caused or was intended</b> to be caused.	
<b>Category 1</b>	<ul style="list-style-type: none"> <li>Information related to a terrorist act involving the endangering of life or serious injury</li> <li>Information related to a terrorist act involving substantial impact to economic interests or civic infrastructure</li> </ul>
<b>Category 2</b>	<ul style="list-style-type: none"> <li>All other cases</li> </ul>

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

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page.

<b>Harm</b>	<b>Culpability</b>	
	<b>A</b>	<b>B</b>
<b>Category 1</b>	<b>Starting point</b> 4 years' custody  <b>Category range</b> 3 -5 years' custody	<b>Starting point</b> 3 years' custody  <b>Category range</b> 2-4 years' custody
<b>Category 2</b>	<b>Starting point</b> 3 years' custody  <b>Category range</b> 2-4 years' custody	<b>Starting point</b> 2 years' custody  <b>Category range</b> 6 months -3 years' custody

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the sentence arrived at so far. In particular, relevant recent convictions are likely to result in an upward adjustment. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

### Factors increasing seriousness

#### **Statutory aggravating factors:**

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- Offence committed whilst on bail
- 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 (*When considering this factor, sentencers should bear in mind the statutory definition of terrorism in section 1 of the Terrorism Act 2000, and should be careful to avoid double counting*)

#### **Other aggravating factors:**

- Many lives endangered
- Lengthy period of time over which offender held the information
- Failure to respond to warnings
- Failure to comply with current court orders
- Offence committed on licence or Post Sentence Supervision

### Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Good character
- Offender was pressured or coerced into concealing the information
- Offender discloses information but not as soon as was reasonably practicable
- Offender's responsibility substantially reduced by mental disorder or learning disability

**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**

**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 SIX**

**Ancillary orders**

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

**STEP SEVEN**

**Reasons**

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

**STEP EIGHT**

**Consideration for time spent on bail (tagged curfew)**

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