

Sentencing Council meeting:
Paper number:
Lead Council member:
Lead official:

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SC(18)JAN09 – Terrorism Paper 2
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1 ISSUE

1.1 The second session will include a discussion on the following guidelines:

- Encouragement of Terrorism (Annex D)
- Collection of Terrorist information (Annex E)
- Possession for Terrorist Purposes (Annex F)

2 RECOMMENDATION

2.1 It is recommended that the Council consider and agree proposed changes to the above guidelines.

3 CONSIDERATION

Encouragement of Terrorism (s1 and s2)

3.1 Most respondents were in agreement with this guideline, but there are a few proposals for change.

The week before the consultation document was issued, I passed sentence for an offence of Dissemination of a Terrorist Publication, contrary to section 2 Terrorism Act 2006. ... the guidelines would greatly have assisted me to do what I thought to be right, even on the unusual facts of this case. Having looked in detail at this part only of the draft guidelines, [this guideline] seems to me to be a very thoughtful and practical piece of work. – **HHJ Greg Dickinson**

Culpability

3.2 The CPS propose two additional culpability factors to capture the breadth of dissemination via social media: For culpability B: 'Disseminated publication in an open group available to large audiences; and for culpability C: 'Disseminated publication to closed groups available to a smaller focused audience.'

3.3 Culpability B has been reserved for those who recklessly share material and do so widely. If the Council want to add this culpability B factor it might be better to amend the existing factor to read 'reckless as to whether others would be encouraged or assisted to

engage in terrorist activity and published statement/ disseminated publication widely. If via social media through an open group available to large audiences’.

3.4 The addition of these factors as proposed by the CPS would resolve some difficulties seen at roadtesting where judges disagreed over which culpability factor might apply in a case where an offender with a very small number of twitter followers posted tweets glorifying an act of terrorism – reckless as to whether others might be encouraged by their message. Some sentencers felt that because the offender only had a small number of followers his case should fall into category C, whereas others argued that he had posted this to an open twitter account, and had no control over who could see it regardless of his small number of followers, therefore it should fall into B. These amendments would provide greater clarification and should result in greater consistency.

Question 1: Does the Council want to add any of the proposed culpability factors?

3.5 The Home Office made the following comment:

The narrative and culpability factors helpfully make clear that this offence can be committed intentionally or recklessly, and that the encouragement of terrorism can include its glorification. Although I appreciate that this is implicit, I thought it may be helpful to also make explicit that the offence need not be linked to any particular act of terrorism (as opposed to acts of terrorism generally), and that it is irrelevant whether any person is in fact encouraged or induced to commit, prepare or instigate an act of terrorism. – **Home Office**

3.6 The Council could add extra wording to the relevant culpability factors, for example culpability A, factor two could read ‘Intended to encourage others to engage in *any form of* terrorist activity.’

Question 2: Does the Council want to add any additional wording to the culpability factors?

Harm

3.7 The CPS agree with the harm factors but suggest three *additional* harm factors to help assess the audience response to the encouragement:

Category 1:
Encouragement/dissemination caused a positive audience response.
Category 2:
Encouragement/dissemination caused a mixed reaction/no known response.
Category 3:
Encouragement/dissemination caused a negative audience response.

3.8 The Council may consider that the audience response might be particularly difficult to evidence and that the court would struggle to make use of these additional factors.

Question 3: Does the Council want to add the proposed additional harm factors?

3.9 The Council might prefer the factors proposed by the Assistant Commissioner, Mark Rowley who is concerned that there is nothing in the guideline to cover the severity of the terrorist material. He proposes the following factors:

High Harm
Content that provides instruction for specific attacks including encouragement, methodology or targets;
Medium Harm
Non-specific content on how to support attacks including funding;
Low Harm
Speeches and publications that encourage non-specific support to attacks and proscribed organisations.

3.10 The Home Office, who have had sight of the Assistant Commissioner’s letter, endorse his view on this point.

3.11 I propose some changes to these proposals to link the wording more closely to the offence, and to separate out encouragement which endangers life. I also propose changing the phrase ‘attack’ to ‘terrorist activity’ which is far wider and would link to other terrorist behaviour such as encouraging others to join or support proscribed organisations or encouraging others to travel abroad to join or support terrorist organisations or for other terrorist purposes. I have also kept the top harm factor from the consultation version, as this factor is not covered by the Assistant Commissioner’s proposals;

Harm 1
<ul style="list-style-type: none"> • Evidence that others have acted on or been assisted by the encouragement • Statement or publication provides instruction for specific terrorist activity endangering life including encouragement, methodology or targets
Harm 2
<ul style="list-style-type: none"> • Statement or publication provides non-specific content encouraging support for terrorist activity endangering life • Statement or publication provides instruction for specific terrorist activity not directly endangering life including encouragement, methodology or targets
Harm 3
<ul style="list-style-type: none"> • Statement or publication provides non-specific content encouraging support for terrorist activity not endangering life and support for proscribed organisations • Other cases where characteristics for categories 1 or 2 are not present

3.12 These changes might also resolve some of the issues revealed at roadtesting where sentencers were inconsistent in their allocation of harm, mainly down to confusion about what was intended by material which directly or indirectly encourages terrorism. These factors spell this out more clearly so that material which directly encourages a terrorist act would be expected to 'provide instruction' but that instruction could amount to just encouragement, or be specific to methodology or instruction on targets.

Question 4: Does the Council want to amend the existing harm factors?

3.13 The Attorney General's Office agreed with the guideline, however in harm they were concerned about the addition of the first factor in harm category 1, 'Evidence that others have acted on or been assisted by the encouragement'

...it may well be difficult to evidence that others have been assisted or encouraged and this could have the consequence of a reckless offender standing to receive a higher sentence than one who has committed the action intentionally.

3.14 In including this factor the Council acknowledged that there will be few cases where it is clear that a terrorist has committed an act of terrorism having been assisted or encouraged to do so by material disseminated. However, where it is clear, then this is certainly a factor that significantly increases harm. If the evidence is not there then the factor will not be applicable.

3.15 To address the AGO's second concern; where this harm factor does apply, but the offender was reckless the case would fall into B1 with a starting point sentence of 4 years (range 3-5). Where the harm factor does not apply but the offender committed the offence intentionally then the case will either be A1 where the material directly encourages activity endangering life, or A2 if the material *indirectly* encourages activity endangering life or *directly* encourages other types of terrorist activity. In either scenario, the intentional offender's case would result in the same or a higher sentence than a reckless offender whose material was used in an act of terrorism. It would be unlikely that a reckless offender would ever receive a higher sentence than an intentional offender. They could only do so if the intentional offender's harm fell into category 3 in which case, arguably they should receive a lesser sentence.

Question 5: Does the Council want to retain or delete the top harm factor in harm category 1?

Aggravating and Mitigating Factors

3.16 The CPS suggest the addition of an aggravating factor 'attempted anonymity'.

3.17 One respondent felt it inconsistent not to include the factor ‘deliberate use of encrypted communications or similar technologies...’ as an aggravating factor in this guideline when it appears in the preparation guideline.

3.18 The Home Office proposed an additional factor ‘offences committed in prison’ and suggest this should be in all of the terrorism guidelines. This was a point also raised by one of the judges in roadtesting.

Question 6: Does the Council want to add any additional aggravating factors?

3.19 At the December Council meeting we considered adding the factors ‘sole or primary carer for dependent relatives’ and ‘age/ lack of maturity’ where it affects the responsibility of the offender’.

Question 7: Is the Council content to add both mitigating factors to this guideline?

Collection of Terrorist Information (s58)

Culpability

3.20 The CPS are concerned that the factors, especially the upper culpability factors, are only relevant in offending that is so serious that a different charge is likely to be prosecuted such as a section 57 or section 5 charge. The CPS, therefore, suggest the following alternative culpability factors:

Category A

- Offender collected, made a record of, or was found in possession of information likely to be useful to a person committing or preparing an act of terrorism and [the offender] demonstrated support for terrorist activity or a terrorist organisation either in the UK or abroad.

Category B

- Offender collected, made a record of, or was found in possession of information likely to be useful to a person committing or preparing an act of terrorism but had no terrorist connections or motivations.

3.21 This would result in just two levels of culpability. The Council may want to retain a three-level structure by including a higher culpability factor, similar to that in the current draft, along the lines of ‘Offender collected, made a record of, or was in possession of information for use in a terrorist act’. Whilst this is similar to the original consultation version it does not link to proximity which might make it more likely to be charged under this offence. This level of seriousness would clearly justify the very highest sentence (which would include a starting point of 10 years presently and up to a starting point of 14 years if the legislation is amended to increase the statutory maximum).

3.22 If the Council are content to make this change the culpability factors would be:

Category A

- Offender collected, made a record of, or was in possession of information for use in a terrorist act

Category B

- Offender collected, made a record of, or was found in possession of information likely to be useful to a person committing or preparing an act of terrorism and [the offender] demonstrated support for terrorist activity or a terrorist organisation either in the UK or abroad.

Category C

- Offender collected, made a record of, or was found in possession of information likely to be useful to a person committing or preparing an act of terrorism but had no terrorist connections or motivations.

3.23 The Assistant Commissioner was concerned about the association between culpability and how advanced the plot is (similar to the concern raised under the preparation guideline). This would be resolved by the use of the factors above.

Question 8: Does the Council want to amend the culpability factors as proposed above?

Harm

3.24 The Assistant Commissioner raises the same concern as that raised under encouragement above; that the harm factors should include reference to the severity of the material. He proposes the same factors as before (para 3.7).

3.25 The existing harm model includes just two levels of harm and places any information which is useful for terrorist activity endangering life or involving substantial impact to the economy or civic infrastructure into harm 1.

3.26 There were no other requests for a change of this nature but the Council could change the wording of factor 1 to achieve greater consistency between this guideline and the encouragement guideline. Harm category 1 would therefore become: 'Material provides instruction for specific terrorist activity endangering life or intended to cause widespread and serious damage to property, economic interests or substantial impact upon civic infrastructure. Instruction includes encouragement, methodology or targets', and category 2 'All other cases'.

Question 9: Does the Council want to amend the harm factors?

3.27 At roadtesting some of the judges struggled with the harm factors in a case study where the offender had no terrorist connection, but had collected material that provided

instruction for building a detonator and other items that could endanger life. In the case study, it stated that the court had accepted the offender had obtained the materials purely out of curiosity. His case might have fallen into harm category 1 but most placed him in harm category 2 on the basis that he did not intend the materials to be used by anyone engaging in terrorist activity. Strictly following the guideline, it is not clear that that was the correct approach, albeit the end result might have seemed fairer. Perhaps, therefore, the Council may wish to consider a harm approach similar to that proposed for the preparation guideline. I.e. one which links harm to likelihood of harm.

A - Material provides instruction for specific terrorist activity endangering life or intended to cause widespread and serious damage to property, economic interests or substantial impact upon civic infrastructure. Instruction includes encouragement, methodology or targets

B - All other cases

When considering the likelihood of harm the court should consider how likely the material is to be used

	A	B
High likelihood of harm	Harm category 1	Harm category 2
Low likelihood of harm	Harm category 2	Harm category 3

Question 10: Does the Council want to amend the harm factors as above?

Aggravating Factors

3.28 The CPS propose the additional aggravating factor ‘degree of practical assistance the item would give them’. If the Council amend the harm factors in line with the Assistant Commissioner’s comments it may be that this factor is not required.

Question 11: Does the Council want to add this aggravating factor?

Sentencing

3.29 Professor Hungerford Welch proposes that for the sentences in the lowest seriousness bracket (currently C2), the Council should consider including a community order in the range as this would be for an offender who has no terrorist connection and the material is not of use to those looking to endanger life or cause a substantial impact to the economy etc. This view was shared by a couple of other academics at the roundtable discussion.

Question 12: Does the Council want to include community order in the lowest sentence range?

3.30 Respondents were broadly in agreement with the sentences for this guideline. However, if the Council adopt the proposed changes to culpability and harm discussed above the sentencing table will change in any event as there is an additional level of harm resulting in a 3x3 sentencing table. In order to provide for that it is proposed that the top and bottom sentences remain the same and harm level 2 includes sentences in the middle.

3.31 If the proposed changes are accepted as discussed above the guideline would look like this:

Culpability demonstrated by one or more of the following:	
A	<ul style="list-style-type: none"> Offender collected, made a record of, or was in possession of information <i>for use</i> in a terrorist act
B	<ul style="list-style-type: none"> Offender collected, made a record of, or was found in possession of information <i>likely to be useful</i> to a person committing or preparing an act of terrorism and demonstrated support for terrorist activity or a terrorist organisation either in the UK or abroad.
C	<ul style="list-style-type: none"> Offender collected, made a record of, or was found in possession of information <i>likely to be useful</i> to a person committing or preparing an act of terrorism but had no terrorist connections or motivations.

Harm	
The court should consider the factors set out below to determine the level of harm that has been caused, intended or risked .	
A	Material provides instruction for specific terrorist activity endangering life or intended to cause widespread and serious damage to property, economic interests or substantial impact upon civic infrastructure. Instruction includes encouragement, methodology or targets
B	All other cases

When considering the likelihood of harm the court should consider how likely the material is to be used

	A	B
High likelihood of harm	Harm category 1	Harm category 2
Low likelihood of harm	Harm category 2	Harm category 3

Harm	Culpability		
	A	B	C
Category 1	Starting point 7 years' custody Category range 5-9 years' custody	Starting point 5 years' custody Category range 3-6 years' custody	Starting point 2 years' custody Category range 1-4 years' custody

Category 2	Starting point 6 years' custody Category range 4-8 years' custody	Starting point 4 years' custody Category range 3-5 years' custody	Starting point 18 months' custody Category range 6 months' -3 years' custody
Category 3	Starting point 5 years' custody Category range 3 - 6 years' custody	Starting point 3 years' custody Category range 2-5 years' custody	Starting point 1 year custody Category range High CO – 2 years' custody

Question 13: Does the Council agree to the proposed sentence levels?

Change to Legislation

3.32 The consultation paper included a second sentencing table to account for the government's proposal to change the statutory maximum. As far as we understand it, the Home Office do intend to go ahead with this legislation and there will be a Counter Terrorism Bill, however there is currently no legislative slot available for this Bill. I am in touch with the Home Office to ascertain the latest and will provide an oral update if there is any further news. It may be that our Ministry of Justice representative might have further information as well.

3.33 The Terrorism guidelines are due to be published on 22 March and come into force on 27 April. The Council will need to decide whether to go ahead and publish the full package of guidelines this Spring, including the Collection of Terrorist Information guideline based on the existing statutory maximum. At a future stage, once the legislation is in force, the Collection guideline could be revised with minimal extra work based on the new statutory maximum and bearing in mind the intention of parliament which would be clearer once the debates had taken place, and the legislation passed. Alternatively, the Council could choose to publish eight out of the nine guidelines in April and only publish the Collection guideline once the legislation has been brought in.

Question 14: Does the Council want to publish all of the guidelines this Spring?

Possession for Terrorist Purposes

3.34 The Assistant Commissioner raises the same concern for this guideline as raised for the s5 and s58 guidelines; that culpability should not be linked to proximity. For the s5 guideline this point was raised by numerous parties but only the Assistant Commissioner has raised it under this guideline. It may be that the other respondents were not as concerned about this guideline as proximity is given less prominence given that there are other factors at all levels of culpability to be considered.

Question 15: Does the Council agree to retain the link to proximity in the culpability factors?

3.35 The London Criminal Courts' Solicitors' Association propose that the first factor in culpability C should read 'possession of article(s) indicates that offender has engaged in limited preparation toward terrorist activity' rather than *very* limited.

Question 16: Does the Council want to remove the word 'very' from the first factor in culpability C?

Harm

3.36 The Assistant Commissioner again raises concern about the harm factors and proposes that they should be better linked to the severity of the material, as proposed for section 1 and 2, and section 58 above. The factors proposed by the Assistant Commissioner would not work as well for this guideline as they refer to content of information or materials. Under the current draft any article with potential to facilitate an act resulting in loss of life or significant economic damage would fall into high harm.

Question 18: Does the Council want to retain the existing harm factors?

3.37 The Assistant Commissioner also suggests that harm should include specific reference to 'bomb making instruction' documents as an example of high harm.

Question 19: Does the Council want to add the example to the high harm factor?

3.38 There were no other comments raised in relation to this guideline.

4 IMPACT

4.1 The Analysis and Research team will be working on a final resource assessment over the coming weeks once we have progressed further with our revisions to the guidelines.

Encouragement of Terrorism

Encouragement of terrorism

Terrorism Act 2006 (section 1)

Dissemination of terrorist publications

Terrorism Act 2006 (section 2)

Triable either way

Maximum: 7 years' custody

Offence range: 6 months' custody – 6 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.

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	<ul style="list-style-type: none"> • Offender in position of trust, authority or influence and abuses their position to encourage others • Intended to encourage others to engage in terrorist activity • Intended to provide assistance to others to engage in terrorist activity
B	<ul style="list-style-type: none"> • Reckless as to whether others would be encouraged or assisted to engage in terrorist activity and published statement/ disseminated publication widely
C	<ul style="list-style-type: none"> • Other cases where characteristics for categories A or B are not present

Harm	
The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused.	
Category 1	<ul style="list-style-type: none"> • Evidence that others have acted on or been assisted by the encouragement • Statement/ terrorist publication directly encourages or assists terrorist activity which endangers life
Category 2	<ul style="list-style-type: none"> • Statement/ terrorist publication indirectly encourages or glorifies terrorist activity which endangers life • Statement/ terrorist publication directly encourages or assists terrorist activity not endangering life
Category 3	<ul style="list-style-type: none"> • Statement/ terrorist publication indirectly encourages or glorifies terrorist activity not endangering life • Other cases where characteristics for categories 1 or 2 are not present

STEP TWO
Starting point and category range

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to 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.

Harm	Culpability		
	A	B	C
Category 1	Starting point 5 years' custody	Starting point 4 years' custody	Starting point 3 years' custody
	Category range 4 -6 years' custody	Category range 3-5 years' custody	Category range 2-4 years' custody
Category 2	Starting point 4 years' custody	Starting point 3 years' custody	Starting point 2 years' custody
	Category range 3-5 years' custody	Category range 2-4 years' custody	Category range 1-3 years' custody
Category 3	Starting point 3 years' custody	Starting point 2 years' custody	Starting point 1 years' custody
	Category range 2-4 years' custody	Category range 1-3 years' custody	Category range 6 months' custody – 2 years

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:

- Specifically targeted audience

- Vulnerable/ impressionable audience
- Communication with known extremists
- Significant volume of terrorist publications published or disseminated
- Used multiple social media platforms to reach a wider audience
- Failure to respond to warnings
- Failure to comply with 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 and/or exemplary conduct
- Offender coerced
- Clear evidence of a change of mind set prior to arrest
- 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.

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Collection of Terrorist Information

Terrorism Act 2000 (section 58)

Triable either way
Maximum: 10 years' custody

Offence range: 6 months' – 9 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.

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	<ul style="list-style-type: none"> Offender collected, made a record of, or was in possession of information for use in terrorist activity where preparations are well advanced
B	<ul style="list-style-type: none"> Offender collected, made a record of, or was in possession of information for use in terrorist activity, but had engaged in limited preparation Offender gathered, collected, made a record of or was in possession of information intending to assist others engaging in terrorist activity Offender repeatedly accessed extremist material (where not falling within A)
C	<ul style="list-style-type: none"> The offender had no terrorist connections or motivation and had no intention to use or share the information

Harm

The court should consider the factors set out below to determine the level of harm that has been **caused, intended or risked**.

Category 1	<ul style="list-style-type: none"> Information is useful to those planning to engage in terrorist activity causing loss of life, serious injury or involving substantial impact to the economy or civic infrastructure
Category 2	<ul style="list-style-type: none"> All other cases

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.

Harm	Culpability		
	A	B	C
Category 1	Starting point 7 years' custody	Starting point 5 years' custody	Starting point 2 years' custody
	Category range 5-9 years' custody	Category range 3-6 years' custody	Category range 1-4 years' custody
Category 2	Starting point 5 years' custody	Starting point 3 years' custody	Starting point 1-year custody
	Category range 3 - 6 years' custody	Category range 2-5 years' custody	Category range 6 months – 2 years' custody

Or if statutory maximum is increased:

Harm	Culpability		
	A	B	C
Category 1	Starting point 10 years' custody	Starting point 7 years' custody	Starting point 4 years' custody
	Category range 8-14 years' custody	Category range 5-9 years' custody	Category range 2-6 years' custody
Category 2	Starting point 6 years' custody	Starting point 4 years' custody	Starting point 2 years' custody
	Category range 4-8 years' custody	Category range 2-6 years' custody	Category range 1 years' custody - 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:

- Significant volume of terrorist publications
- Length of time over which offending was committed
- Failure to respond to warnings
- Failure to comply with court orders
- Offence committed on licence or PSS

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Good character and/or exemplary conduct
- Clear evidence of a change of mind set prior to arrest
- 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.

Possession for Terrorist Purposes

Terrorism Act 2000 (section 57)

This is a serious specified offence for the purposes of sections 224 and 225(2) (life sentence for serious offences) of the Criminal Justice Act 2003.

This is an offence listed in Part 1 of Schedule 15B for the purposes of sections 224A (life sentence for second listed offence) of the Criminal Justice Act 2003.

This is a specified offence for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

This is an offence listed in Schedule 18A for the purposes of section 236A (special custodial sentence for certain offenders of particular concern) of the Criminal Justice Act 2003.

Triable either way
Maximum: 15 years' custody

Offence range: 1 – 14 years' custody

This guideline applies only to offenders aged 18 and older
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STEP ONE**Determining the offence category**

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

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

Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

Culpability demonstrated by one or more of the following:

A	<ul style="list-style-type: none"> • Possession of article(s) indicates that offender's preparations for terrorist activity are complete or almost complete • Offender is a significant participant in the commission, preparation or instigation of an act of terrorism
B	<ul style="list-style-type: none"> • Cases falling between A and C
C	<ul style="list-style-type: none"> • Possession of article(s) indicates that offender has engaged in very limited preparation toward terrorist activity • Offender is of limited assistance or encouragement to others who are preparing for terrorist activity

Harm

The court should consider the factors set out below to determine the level of harm that has been **caused, intended or risked**.

Category 1	<ul style="list-style-type: none"> • Article(s) had potential to facilitate an offence causing loss of life, serious injury or a substantial impact to the economy or civic infrastructure
Category 2	<ul style="list-style-type: none"> • All other cases

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.

Harm	Culpability		
	A	B	C
Category 1	Starting point 10 years' custody	Starting point 7 years' custody	Starting point 4 years' custody
	Category range 8-14 years' custody	Category range 5-9 years' custody	Category range 2-6 years' custody
Category 2	Starting point 6 years' custody	Starting point 4 years' custody	Starting point 2 years' custody
	Category range 4-8 years' custody	Category range 2-6 years' custody	Category range 1-3 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:

- Article has the potential to endanger many lives
- Length of time over which offending was committed
- 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 and/or exemplary conduct
- Clear evidence of a change of mind set prior to arrest

- 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**Dangerousness**

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to impose a life sentence (section 224A or 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**Special custodial sentence for certain offenders of particular concern (section 236A)**

Where the court does not impose a sentence of imprisonment for life or an extended sentence, but does impose a period of imprisonment, the term of the sentence must be equal to the aggregate of the appropriate custodial term and a further period of 1 year for which the offender is to be subject to a licence.

STEP SEVEN**Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the Offences Taken into Consideration and Totality guideline.

STEP EIGHT**Ancillary orders**

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

STEP NINE**Reasons**

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

STEP TEN

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.

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