

Failure to Disclose Information about Acts of Terrorism

Terrorism Act 2000 (section 38B)

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.

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

New culpability factors:

Culpability demonstrated by one or more of the following:	
A	<ul style="list-style-type: none"> Information was highly significant
B	<ul style="list-style-type: none"> Cases whose characteristics fall between A and C
C	<ul style="list-style-type: none"> Information was of low significance

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"> Information related to terrorist activity endangering life Information related to terrorist activity intended to cause widespread or serious damage to property, economic interest or substantial impact upon 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
Category 1	Starting point 4 years' custody Category range 3-5 years' custody	Starting point 3 years' custody Category range 2-4 years' custody
Category 2	Starting point 3 years' custody Category range 2-4 years' custody	Starting point 2 years' custody Category range High Community Order-3 years' custody

New sentence table:

Harm	Culpability		
	A	B	C
Category 1	Starting point 4 years' custody Category range 3 - 5 years' custody	Starting point 3 years' custody Category range 2 - 4 years' custody	Starting point 2 years' custody Category range 6 months - 3 years' custody
Category 2	Starting point 3 years' custody Category range 2 - 4 years' custody	Starting point 2 years' custody Category range 6 months - 3 years' custody	Starting point 18 months' custody Category range High Community Order - 2 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
- 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
- Offence committed whilst in prison

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions or no relevant/recent convictions
- Good character
- Offender involved through coercion, intimidation or exploitation
- Offender discloses information but not as soon as was reasonably practicable
- Offender's responsibility substantially reduced by mental disorder or learning disability
- Age and/ or lack of maturity where it affects the responsibility of the offender
- Sole or primary carer for dependent relatives

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.

DRAFT

Blank page

DRAFT