

Sentencing Council meeting:
Paper number:

25 January 2019
**SC(19)JAN06 –Expanded explanations in
offence specific guidelines**

Lead Council member:
Lead official:

Maura McGowan
Ruth Pope
0207 071 5781

1 ISSUE

1.1 At the December meeting the Council agreed how the explanations provided for factors in the General guideline could apply to factors in offence specific guidelines.

1.2 The Council is asked to sign off the expanded explanations for offence specific guidelines at this meeting with a view to launching the consultation at the end of February.

1.3 The plan is then to consider the responses to that consultation in June 2019 and to publish both phases of the project to replace the SGC Seriousness guideline at the end of July 2019. This will allow for training on the guidelines in September and October 2019.

2 RECOMMENDATION

2.1 That the Council agrees the text of the expanded explanations at **Annex A** to be applied to offence specific guidelines, and considers the proposed changes to the mitigating factor on ill health (M15) (paragraphs 3.4 to 3.9).

2.2 That the Council considers the proposed changes to definitive guidelines set out in draft at **Annex B** and agrees to consult on making these changes across all relevant guidelines.

2.3 That the Council considers a draft policy for making future changes to digital guidelines at **Annex C** and agrees to consult on the policy. (paragraphs 3.11 to 3.22)

2.4 That the Council considers the likely impact of the expanded explanations on sentencing severity and agrees to asking questions in the consultation on the likely effect of the expanded explanations on sentencing practice. (paragraphs 3.23 to 3.24)

2.5 That the Council notes the comments from the Justice Select Committee on providing information on the five purposes of sentencing and considers whether this should be addressed in the consultation document. (paragraphs 3.26 to 3.31)

2.6 That the Council agrees the approach to be taken to Sentencing Guidelines Council guidelines. (paragraphs 3.32 to 3.34)

2.7 That the Council agrees to consult on whether the General guideline should be made available as an overarching guideline. (paragraphs 3.35 to 3.37)

2.8 That the Council agrees to refer the issue of fines for high income earners to the MCSG working group. (paragraphs 3.38 to 3.39)

3 CONSIDERATION

Expanded Explanations

3.1 Annex A contains the expanded explanations and the factors to which they will be applied. These are the same as those agreed for the General guideline subject to minor changes agreed at the December meeting to allow for differences in the way some factors are worded in offence specific guidelines.

3.2 There is no requirement to do so, but if Council members wish to view the expanded explanations as applied to offence specific guidelines:

Go to: <https://sentencing-staging.bang-on.net/>

User name: sentencing_staging

Password: surcharging-footwork

You may be asked to enter these more than once (sorry).

This will take you to the homepage of the test website.

3.3 On the test website click on 'Sentencing Guidelines for use in Magistrates' Court' or 'Sentencing Guidelines for use in the Crown Court'. This will bring you to the search offences screen. Work is ongoing to add explanations to all guidelines but at time of writing the expanded explanations have been applied to Step 2 factors in the following guidelines:

- Assault occasioning actual bodily harm / Racially and religiously aggravated ABH
- Possession of an article with blade/point in a public place,
- Non-domestic burglary
- Breach of criminal behaviour order/ ASBO
- Owner or person in charge of a dog dangerously out of control
- Possession of a controlled drug with intent to supply it to another
- Organisations: Unauthorised or harmful deposit, treatment or disposal etc of waste
- Fraud
- Individuals: Breach of food safety and food hygiene regulations
- Harassment (putting people in fear of violence)
- Unlawful act manslaughter (Crown Court only)
- Robbery – street and less sophisticated commercial (Crown Court only)
- Sexual assault
- Encouragement of terrorism
- Careless driving (magistrates' guidelines only)
- Football related offences (magistrates' guidelines only)

Serious medical condition

3.4 At the December meeting there was a brief discussion regarding the mitigating factor (M15) relating to ill health. In the General guideline the factor is worded:

- Physical disability or serious medical conditions requiring urgent, intensive or long-term treatment.

3.5 In all offence specific guidelines the factor is worded:

- Serious medical condition requiring urgent, intensive or long-term treatment

(In some guidelines it says 'conditions' rather than 'condition'.)

3.6 The expanded explanation reads:

Such conditions as may affect the impact of a sentence on the offender may justify a reduction in sentence.

3.7 The issue for the Council to consider relates to whether this explanation is as helpful as it might be and whether it accurately reflects the case law on the subject. Several relevant decisions of the CACD are helpfully summarised in the case of [R v AS and R v SM \[2018\] EWCA 318 \(Crim\)](#).

R v Bernard [1997] 1 Cr App R (S) 135

(i) a medical condition which may at some unidentified future date affect either life expectancy or the prison authorities' ability to treat a prisoner satisfactorily may call into operation the Home Secretary's powers of release by reference to the Royal Prerogative of mercy or otherwise but is not a reason for this court to interfere with an otherwise appropriate sentence;

(ii) the fact that an offender is HIV positive, or has a reduced life expectancy, is not generally a reason which should affect sentence;

(iii) a serious medical condition, even when it is difficult to treat in prison, will not automatically entitle an offender to a lesser sentence than would otherwise be appropriate;

(iv) an offender's serious medical condition may enable a court, as an act of mercy in the exceptional circumstances of a particular case, rather than by virtue of any general principle, to impose a lesser sentence than would otherwise be appropriate.

R v Qazi [2011] 2 Cr App R (S) 8

v) Once a sentence of imprisonment has been imposed, unless it is to be contended on appeal that the judge should not have imposed a sentence of imprisonment because imprisonment anywhere would ipso facto cause a breach of Article 3, the relevance of an appellant's medical condition relates solely to the assessment of the overall length of the sentence in accordance with the principles established in Bernard.

vi) Any issues as to breach of the duties of the Secretary of State in relation to medical treatment and conditions in prison are matters for civil remedies and not for this division of the Court of Appeal.

R v Hall [2013] 2 Cr App R (S) 68

the sentencing court is fully entitled to take account of a medical condition by way of mitigation as a reason for reducing the length of the sentence, either on the ground of the greater impact which imprisonment will have on the appellant, or as a matter of generally expressed mercy in the individual circumstances of the case: see Bernard.

Those who are gravely ill, or severely disabled, or both, may well have to be imprisoned if they commit serious offences. Their condition cannot be a passport to absence of punishment. If this appellant should ever again offend seriously, that would no doubt be the inevitable outcome, and some loss of the quality of care compared with a self-organised home regime would no doubt necessarily follow. But for the reasons which we have already set out, the impact on this appellant of a sentence of imprisonment is greater by a margin which it is difficult to overstate than it would be on an ordinary appellant. There is no lack of punishment in what he has undergone since being sentenced in the summer of last year. He is now said by the hospital to be significantly more frail than at the time of sentence

R v Clarke; R v Cooper [2017] 1 WLR 3851, [2017] 2 Cr App R (S) 18.

Whilst we consider that an offender's diminished life expectancy, his age, health and the prospect of dying in prison are factors legitimately to be taken into account in passing sentence, they have to be balanced against the gravity of the offending, (including the harm done to victims), and the public interest in setting appropriate punishment for very serious crimes. Whilst courts should make allowance for the factors of extreme old age and health, and whilst courts should give the most anxious scrutiny to those factors as was recognised in R v Forbes [2017] 1 WLR 53, we consider that the approach of taking them into account in a limited way is the correct one.

a. The terminal prognosis is not in itself a reason to reduce the sentence even further than it might be reduced in accordance with the Bernard principles. The court must impose a sentence which properly meets the aims of sentencing even if it will carry the clear prospect that the offender will die in custody. The prospect of death in the near future will be a matter to be considered by the prison authorities and the Secretary of State under the ERCG provisions which we have mentioned.

b. However, the appellant's knowledge that he must now face the prospect of death in prison, subject only to the ERCG provisions, is a factor relevant to the application of the Bernard principles. So too is the prospect that his worsening condition during his decline towards death will make each day harder for him than it already is, and much harder than it is for prisoners in good health. The terminal prognosis must therefore be taken into account in assessing whether imprisonment weighs so much more heavily on the appellant than it does on other prisoners that the length of the sentence must exceptionally be reduced, even if this court concludes that no proper application of the Bernard principles could result in such a reduction as would enable the appellant to be released before death.

3.8 In the subsequent case of Gumble the court extracted the following points:

R v Gumble [2018] EWCA Crim 1800

- i) A serious medical condition, even when it is difficult to treat in prison, will not automatically entitle the defendant to a lesser sentence than would otherwise be appropriate;
- ii) An offender's serious medical condition may enable a court, as an act of mercy in the exceptional circumstances of a particular case, to impose a lesser sentence than would

otherwise be appropriate, but there will always be a need to balance issues personal to an offender against the public interest in imposing appropriate punishment for serious offending;

- iii) A terminal prognosis is not in itself a reason to reduce the sentence even further. The Court must impose a sentence that properly meets the aims of sentencing even if it will carry the clear prospect that the offender will die in custody. The prospect of death in the near future will be a matter considered by the prison authorities and the Secretary of State under the early release on compassionate grounds procedure (Chapter 12 of Prison Service Order 6000) (“ERCG”);
- iv) But, an offender’s knowledge that he will likely face the prospect of death in prison, subject only to the ERCG provisions, is a factor that can be considered by the sentencing Judge when determining the sentence that it would be just to impose;
- v) Once a sentence of imprisonment has been imposed, unless it is to be contended on appeal that any sentence of imprisonment would cause a breach of Article 3, the relevance of the defendant’s medical condition at the date of sentence relates solely to the assessment of the overall length of the sentence that it would be just to impose;
- vi) If an offender relies upon matters that post-date sentence, then the general rule is that the Court of Appeal will only interfere with a sentence if persuaded that at the time it was passed it was unlawful or wrong in principle or manifestly excessive in length;
- vii) A more flexible approach can be adopted, and the Court may have regard to a significant deterioration in a medical condition, where the condition was known at the date of sentence, but the cases in which it will be appropriate to do so are rare;
- viii) If it is contended that a prisoner’s health is being prejudiced by a failure in care whilst in prison, it is through the civil courts not by way of appeal to the Criminal Division of the Court of Appeal that a remedy should be sought;
- ix) Where the medical condition affects either the life expectancy of the prisoner or the prison authority’s ability to treat the prisoner satisfactorily then the prisoner should seek release under the ERCG; it is not a reason for the Court of Appeal to interfere with an otherwise appropriate sentence.

3.9 Taking into account all of the above (but disregarding the issues that relate solely to appeals against sentence), the following points could be considered for inclusion in the expanded explanation:

- The court can take account of physical disability or a serious medical condition by way of mitigation as a reason for reducing the length of the sentence, either on the ground of the greater impact which imprisonment will have on the offender, or as a matter of generally expressed mercy in the individual circumstances of the case.
- However, a such a condition, even when it is difficult to treat in prison, will not automatically entitle the offender to a lesser sentence than would otherwise be appropriate.
- There will always be a need to balance issues personal to an offender against the gravity of the offending, (including the harm done to victims) and the public interest in imposing appropriate punishment for serious offending;
- A terminal prognosis is not in itself a reason to reduce the sentence even further. The court must impose a sentence that properly meets the aims of sentencing even if it will carry the clear prospect that the offender will die in custody. The prospect of death in the near future will be a matter considered by the prison authorities and the Secretary of State under the early release on compassionate grounds procedure (ERCG).

- But, an offender’s knowledge that he will likely face the prospect of death in prison, subject only to the ERCG provisions, is a factor that can be considered by the sentencing Judge when determining the sentence that it would be just to impose.

Question 1: Does the Council agree to consult on the above expanded explanation relating to serious medical conditions?

Other mitigating factors

3.10 The wording relating to care leavers in factor M13 and to pregnant women in factor M14 has been redrafted and circulated to members.

Question 2: Does the Council agree with the revised wording at M13 and M14?

Issues arising from the Justice Select Committee response to the General guideline consultation

3.11 The Chair of the JSC wrote to the Council in December with comments on the General guideline. The JSC was largely supportive of the General guideline and was keen to ensure that the explanations in the drop-down boxes should also be available for offence specific guidelines. The detailed points made cover four areas: The structure and format of the guideline; Consultation stage resource assessment; Age and/or lack of maturity; The five purposes of sentencing.

The structure and format of the guideline

We recognise that digital guidelines have the advantage of being easier to update than those in traditional formats. However, we suggest that the Council investigate setting up an online archive to preserve earlier versions of guidelines, as this would provide a valuable resource in appeal cases where the hearing takes place after the relevant guidelines have been amended.

3.12 The issue of maintaining an archive of guidelines and an accessible record of amendments made to digital guidelines is being addressed by the office. Additionally, it is proposed to mark the online copies of the printed guidelines to ensure that users are aware that these may no longer be up to date and that they should refer to the digital guidelines for the current definitive version.

3.13 An issue also arises as to when proposed changes to the digital guidelines should be subject to consultation and whether an abbreviated form of consultation might be appropriate in some cases. The requirement to consult on new and revised guidelines is set out in the Coroners and Justice Act 2009:

120 Sentencing guidelines

(1) In this Chapter “*sentencing guidelines*” means guidelines relating to the sentencing of offenders.

- (2) A sentencing guideline may be general in nature or limited to a particular offence, particular category of offence or particular category of offender.
- (3) The Council must prepare—
- (a) sentencing guidelines about the discharge of a court's duty under section 144 of the Criminal Justice Act 2003 (c. 44) (reduction in sentences for guilty pleas), and
 - (b) sentencing guidelines about the application of any rule of law as to the totality of sentences.
- (4) The Council may prepare sentencing guidelines about any other matter.
- (5) Where the Council has prepared guidelines under subsection (3) or (4), it must publish them as draft guidelines.
- (6) The Council must consult the following persons about the draft guidelines—
- (a) the Lord Chancellor;
 - (b) such persons as the Lord Chancellor may direct;
 - (c) the Justice Select Committee of the House of Commons (or, if there ceases to be a committee of that name, such committee of the House of Commons as the Lord Chancellor directs);
 - (d) such other persons as the Council considers appropriate.
- (7) In the case of guidelines within subsection (3), the Council must, after making any amendments of the guidelines which it considers appropriate, issue them as definitive guidelines.
- (8) In any other case, the Council may, after making such amendments, issue them as definitive guidelines.
- (9) The Council may, from time to time, review the sentencing guidelines issued under this section, and may revise them.
- (10) Subsections (5), (6) and (8) apply to a revision of the guidelines as they apply to their preparation (and subsection (8) applies even if the guidelines being revised are within subsection (3)).
- (11) When exercising functions under this section, the Council must have regard to the following matters—
- (a) the sentences imposed by courts in England and Wales for offences;
 - (b) the need to promote consistency in sentencing;
 - (c) the impact of sentencing decisions on victims of offences;
 - (d) the need to promote public confidence in the criminal justice system;
 - (e) the cost of different sentences and their relative effectiveness in preventing re-offending;
 - (f) the results of the monitoring carried out under section 128

3.14 The legislation permits the Council to issue guidelines without consultation in urgent cases but this provision has never been used by the Council:

123 Preparation or revision of guidelines in urgent cases

(1) This section applies where the Council—

- (a) decides to prepare or revise sentencing guidelines or allocation guidelines, and
- (b) is of the opinion that the urgency of the case makes it impractical to comply with the procedural requirements of section 120 or (as the case may be) section 122.

(2) The Council may prepare or revise the guidelines without complying with—

- (a) in the case of sentencing guidelines, section 120(5), and
- (b) in the case of allocation guidelines, section 122(3).

(3) The Council may—

- (a) in the case of sentencing guidelines, amend and issue the guidelines under section 120(7) or (8) without having complied with the requirements of section 120(6)(b) to (d), and
- (b) in the case of allocation guidelines, amend and issue the guidelines under section 122(5) without having complied with the requirements of section 122(4)(b) to (d).

(4) The guidelines or revised guidelines must—

- (a) state that the Council was of the opinion mentioned in subsection (1)(b), and
- (b) give the Council's reasons for that opinion.

3.15 This consultation on expanded explanations will be used as an opportunity to consult on a few proposed changes, but there may be future occasions when changes to guidelines would be helpful that do not warrant a full review of the guideline and consultation. Scenarios could include:

- a) When a typographical error is discovered in the original definitive guideline
- b) When a substantive error is discovered in the original definitive guideline
- c) When there has been change in legislation making part of a guideline inaccurate, incomplete or misleading.

3.16 Where errors in definitive guidelines are due simply to typographical errors, the practice in the past has been for the office to correct these on the online version and (where the error is sufficiently significant) communicate the change to users. The proposal is that this policy should continue and a log of all such corrections be maintained on the website.

3.17 Where the error is more substantive (an example was where two adjacent starting points in the money laundering guideline were the same) the practice has been for the

Council to agree how the error should be corrected, and to communicate the change to users. The proposal is that the Council should consider such situations on a case by case basis and decide whether any change is merely giving effect to the Council's original intention (which had already been subject to consultation) or whether the change represents a change that requires consultation. Where the Council decides that consultation is required, a targeted four to six week consultation with key stakeholders is likely to be appropriate.

3.18 Changes to legislation may affect guidelines in minor or more substantial ways. An example of a minor effect is in the final step in most guidelines which refers to the requirement for courts to consider whether to give credit for time spent on bail and subject to curfew in accordance with section 240A of the Criminal Justice Act 2003. Early guidelines (assault, burglary, drugs) also refer to giving credit for time spent in custody in accordance with s240 of the Criminal Justice Act 2003, which is no longer correct. It is proposed that in cases such as this, the digital guidelines can simply be made legally correct and the change logged. There would be no purpose in consulting on the change as there is no alternative under consideration and the change would not affect sentencing practice.

3.19 An example where this approach has been taken in the past is when the Council agreed in 2016 to make changes to the title page of certain sex offences to reflect changes to terminology in legislation without consultation. A slightly more substantive change was made to the Sex offences guideline in 2017 when the Council agreed to add a note to the 'trafficking people for sexual exploitation' guideline, as the legislation creating the offence had been repealed by the Modern Slavery Act. The addition of this note was made without formal consultation. The note is effectively a stop gap until a full guideline is produced for the new Modern Slavery Act offences.

3.20 Other more recent changes have been the addition of the new statutory aggravating factor regarding emergency workers to the guidelines to which it applies and a reference to offenders of particular concern in relevant guidelines.

3.21 Fundamental changes to guidelines as a result of legislative change (for example the proposed increases to the maximum sentences for Terrorism offences) will require a substantive review of the guideline and the Council will need to consider on a case by case basis how such changes can be accommodated in its work plan and the length and extent of the consultation on changes.

3.22 Users look to sentencing guidelines as a source of accurate information and it is therefore desirable that every attempt is made to keep the guidelines up to date. It is proposed that the Council uses this consultation to make the changes outlined at Annex B

and to set out its policy on updating and correcting guidelines in future. Suggested text for this policy is set out at Annex C.

Question 3: Does the Council wish to consult on making the changes outlined in Annex B?

Question 4: Does the Council agree with the proposed policy relating to making changes to guidelines set out in Annex C and, if so, does it agree to consult on this policy?

Consultation stage resource assessment

3.23 The JSC repeated its call for more robust consultation stage resource assessments (while recognising the limited resources that the Council has to do this). With regard to the General guideline the JSC was concerned about potential sentence inflation from referring to analogous offences and supported respondents who asked for more guidance on this – a point that the Council has already addressed.

3.24 With regard to the consultation stage resource assessment for the expanded explanations, this will be circulated to members for comment before the consultation is launched. The analysis and research team are gathering evidence where they can, but it will inevitably be impossible to provide an accurate assessment of the likely effect of the expanded factors on sentence severity. The consultation document will state that expanded explanations are designed to reinforce best practice rather than to have an effect on sentencing severity. However, it is possible that particularly with regard to young adults, there could be a decrease in sentencing severity as a result of the approach taken. It is proposed to ask respondents to the consultation if they think explanations will have an effect on sentences, and if so what effect.

Question 5: Does the Council agree to seek the views of respondents on the likely effect on sentencing of the expanded explanations?

Age and/or lack of maturity

3.25 The JSC welcomes the inclusion of guidance on this factor and makes two substantive suggestions for additional information. The first relates to atypical (impaired) brain development. This is an issue that is covered by the mental health overarching guideline. The second suggestion is to include a presumption that young adults up to the age of 25 are still maturing. This has already been addressed in the revised explanation.

The five purposes of sentencing

3.26 In its response the JSC said:

We note that Professor Sir Anthony Bottoms, in the report of his review of the Sentencing Council's exercise of its statutory functions (April 2018), suggested that guidelines might usefully include some reference to the legislative provisions under section 142 of the Criminal Justice Act 2003 setting out the five purposes of sentencing – not least to assist the understanding of victims, offenders and the public more generally. While we welcome the Council's decision to re-state these five purposes in the General Guideline, we agree with Professor Bottoms that public understanding, as well as that of sentencers, would be enhanced by including additional explanatory text for each statutory purpose; in particular, we agree with the Crown Prosecution Service that it would be helpful to explain how they relate to section 143(1) of the 2003 Act, which requires the court to consider the offender's culpability and any harm that the offence caused, or was intended to cause – suggesting a more censure-based approach to sentencing decisions than the predominantly consequentialist purposes set out in section 142. We observe that research evidence broadly supports the contention that increasing sentence lengths is less likely to act as a deterrent than increasing the offender's belief in the likelihood of detection, arrest and conviction;¹ we suggest that this evidence might usefully be brought to the attention of sentencers.

3.27 The test on the five purposes of sentencing in the General guideline is:

The court should consider which of the five purposes of sentencing (below) 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.

- the punishment of offenders
- the reduction of crime (including its reduction by deterrence)
- the reform and rehabilitation of offenders
- the protection of the public
- the making of reparation by offenders to persons affected by their offences

3.28 At the October 2018 meeting the Council considered whether it should provide more information in the General guideline on the purposes and/or effectiveness of sentencing and concluded that it would not be practical to do so. There is no expanded explanation in offence specific guidelines on the five purposes of sentencing. This is because the explanations only expand on what is already in existing guidelines. It seems likely that the JSC will raise the issue again in response to this consultation.

3.29 The Council does make reference to particular purposes of sentencing in some guidelines, for example: the 'step back' factors in the environmental guidelines:

¹ See, for example, A E Bottoms and A von Hirsch 'The Crime Preventive Impact of Legal Sanctions' in P Cane and H M Kritzer (eds) *The Oxford Handbook of Empirical Legal Research* (Oxford University Press 2010)

Where the sentence is or includes a fine, the court should 'step back' and, using the factors set out in steps five and six, review whether the sentence as a whole meets, in a fair way, the objectives of punishment, deterrence and removal of gain derived through the commission of the offence.

3.30 Similarly step five in the Diminished responsibility guideline includes the following:

The court should review whether the sentence as a whole meets the objectives of punishment, rehabilitation and protection of the public in a fair and proportionate way.

3.31 The consultation document could attempt to address the issue and explain that for each offence and offender the balance between the purposes of sentencing will be subtly different. Offence specific guidelines emphasis different aspects of the offending (in terms of harm and culpability) and the offender (in the culpability and aggravating and mitigating factors) that lead the sentencer to a sentence that balances the purposes of sentencing. Where it is particularly relevant some offence specific guidelines specifically remind the sentencer to consider rehabilitative sentences even when the custody threshold is passed (eg theft, drugs). A question could be asked in consultation as to whether further information of the purposes of sentencing would be of practical value in guidelines.

Question 6: Should the consultation document discuss the five purposes of sentencing and invite the views of respondents?

The approach to be taken to Sentencing Guidelines Council guidelines

3.32 There are still a number of SGC guidelines in force:

- Dangerous driving
- Vehicle licence/registration fraud
- Vehicle taking (aggravated). Damage caused to property other than the vehicle in accident or damage caused to vehicle
- Vehicle taking (aggravated). Dangerous driving or accident causing injury
- Arson (criminal damage by fire)
- Criminal damage (other than by fire) / Racially or religiously aggravated criminal damage (other than by fire)
- Disorderly behaviour (harassment, alarm or distress) / Racially or religiously aggravated disorderly behaviour
- Firearm, carrying in a public place
- Identity documents – possess false/ another's/ improperly obtained
- Threatening behaviour - fear or provocation of violence/ Racially or religiously aggravated threatening behaviour
- Trade mark, unauthorised use of etc.
- Witness intimidation
- Affray
- Causing death by careless driving when under the influence of drink or drugs, etc
- Causing death by careless or inconsiderate driving
- Causing death by dangerous driving
- Causing death by driving: unlicensed, disqualified or uninsured drivers

3.33 The majority of these are currently being revised, but it is likely that some of them will remain in force for at least two years after the Seriousness guideline is withdrawn. The SGC guidelines do not have the same format as Sentencing Council guidelines and so the approach of providing expanded explanations to step two factors only, does not translate to these guidelines. Typically SGC guidelines refer to the list of common aggravating and mitigating factors in the SGC Seriousness guideline. The proposal is to provide the list of factors from the Seriousness guideline as a drop down list where they are referred to in SGC guidelines. This will enable the Council to withdraw the Seriousness guideline when the definitive General guideline and expanded explanations come into effect.

3.34 Minor changes can be made to the SGC guidelines as contemplated at Annex B and in line with the policy at Annex C to keep them as up to date and relevant as possible, pending conversion to Sentencing Council format in due course.

Question 7: Does the Council agree with the proposed approach to SGC guidelines?

The availability of expanded explanations for factors that do not appear in offence specific guidelines.

3.35 Most of the factors for which expanded explanations have been created appear regularly at step two of offence specific guidelines, and when they do not appear it is because they are not relevant. However, there may be circumstances where information in the General guideline/ expanded explanations could be relevant to a sentencing exercise that does not include a link to that information.

3.36 An example is the factor 'offence committed in custody' (A17) which appears as a step two factor in only the terrorism guidelines and possession of a controlled drug guideline (it also appears at step one in the bladed article/ offensive weapon guidelines). There are other offences which could be committed in custody where the expanded explanation could be useful but there is no mechanism for users to access the information.

3.37 The proposal is that the consultation could seek views on whether the General guideline should be made available in the way that overarching guidelines are to enable users to refer to the general principles that it sets out.

Question 8: Does the Council agree to consult on treating the General guideline as an overarching guideline that may be relevant to any sentencing exercise?

Fines for high income earners

3.38 The Ministry of Justice has received representations about whether fines for high earners are being adjusted down by sentencers. The question is posed as to whether, if judicial discretion is used to bring a fine down from a basic calculation based on weekly

income, is the correct balance between a proportionate fine based on harm and culpability, and the stated aim of the fine having an “equal impact on offenders with different financial circumstances” being achieved? The suggestion from MoJ is that the Council could consider whether to update the guidance in the MCSG explanatory materials on the approach to be taken in such cases.

3.39 There are other matters relating specifically to the MCSG which the MCSG Working Group will be asked to consider in the spring and it is proposed that this issue should be investigated as part of that exercise.

Question 9: Does the Council agree to refer the issue of fines for high income earners to the MCSG working group?

Pre-sentence reports

3.40 As discussed at the December meeting work is ongoing on providing guidance in a practice direction on when court may sentence to community orders or custody without a pre-sentence report. Sophie Marlow may be able to update the Council on the progress of this work. The Council agreed to use the consultation on expanded explanations to consult on making a small change to the Imposition guideline (extracts from which appear in the expanded explanations) to direct users to the new practice direction for guidance on this issue.

The consultation

3.41 Work is ongoing on drafting the consultation document, which is subject to decisions made at this meeting. A draft of the document will be circulated to members outside of the meeting for comments in order to meet the target for publishing the consultation at the end of February.

4 RISKS/IMPACT

4.1 As discussed at paragraph 3.32 above there was some criticism of the Council for the lack of a detailed impact assessment for the General guideline and the same is likely to apply to the addition of explanations to offence specific guidelines.

Expanded Explanations for factors in offence specific guidelines

STEP TWO

Band Ranges

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

- Where possible, if a financial penalty is imposed, it should remove any economic benefit the offender has derived through the commission of the offence including:
 - avoided costs;
 - operating savings;
 - any gain made as a direct result of the offence.
- The fine should meet, in a fair and proportionate way, the objectives of punishment, deterrence and the removal of gain derived through the commission of the offence; **it should not be cheaper to offend than to comply with the law.**
- In considering economic benefit, the court should avoid double recovery. Where the means of the offender are limited, priority should be given to compensation (where applicable) over payment of any other financial penalty (see further step eight below)

- Where it is not possible to calculate or estimate the economic benefit, the court may wish to draw on information from the enforcing authorities about the general costs of operating within the law.
- When sentencing **organisations** the fine must be sufficiently substantial to have a real economic impact which will bring home to both management and shareholders the need to comply with the law.
- Obtaining financial information: It is for the offender to disclose to the court such data relevant to their financial position as will enable it to assess what they can reasonably afford to pay. If necessary, the court may compel the disclosure of an individual offender's financial circumstances pursuant to section 162 of the Criminal Justice Act 2003. In the absence of such disclosure, or where the court is not satisfied that it has been given sufficient reliable information, the court will be entitled to draw reasonable inferences as to the offender's means from evidence it has heard and from all the circumstances of the case. In setting a fine, the court may conclude that the offender is able to pay any fine imposed unless the offender has supplied financial information to the contrary.

Community orders table

For further information see the [Imposition of community and Custodial Sentences guideline](#)

- The seriousness of the offence should be the **initial** factor in determining which requirements to include in a community order. Offence specific guidelines refer to three sentencing levels within the community order band based on offence seriousness (low, medium and high). The culpability and harm present in the offence(s) should be considered to identify which of the three sentencing levels within the community order band is appropriate. See below for **non-exhaustive** examples of requirements that might be appropriate in each.
- At least one requirement **MUST** be imposed for the purpose of punishment and/or a fine imposed in addition to the community order unless there are exceptional circumstances which relate to the offence or the offender that would make it unjust in all the circumstances to do so.
- A suspended sentence **MUST NOT** be imposed as a more severe form of community order. A suspended sentence is a custodial sentence.
- Community orders can fulfil all of the purposes of sentencing. In particular, they can have the effect of restricting the offender's liberty while providing punishment in the community, rehabilitation for the offender, and/or ensuring that the offender engages in reparative activities.
- A community order must not be imposed unless the offence is 'serious enough to warrant such a sentence'. Where an offender is being sentenced for a non-imprisonable offence, there is no power to make a community order.
- Sentencers must consider all available disposals at the time of sentence; even where the threshold for a community sentence has been passed, a fine or discharge may be an appropriate penalty. In particular, a Band D fine may be an appropriate alternative to a community order.

- The court must ensure that the restriction on the offender’s liberty is commensurate with the seriousness of the offence and that the requirements imposed are the most suitable for the offender.
- Sentences should not necessarily escalate from one community order range to the next on each sentencing occasion. The decision as to the appropriate range of community order should be based upon the seriousness of the new offence(s) (which will take into account any previous convictions).
- In many cases, a pre-sentence report will be pivotal in helping the court decide whether to impose a community order and, if so, whether particular requirements or combinations of requirements are suitable for an individual offender. Whenever the court reaches the provisional view that a community order may be appropriate, it should request a pre-sentence report (whether written or verbal) unless the court is of the opinion that a report is unnecessary in all the circumstances of the case. It may be helpful to indicate to the National Probation Service the court’s preliminary opinion as to which of the three sentencing ranges is relevant and the purpose(s) of sentencing that the package of requirements is expected to fulfil. Ideally a pre-sentence report should be completed on the same day to avoid adjourning the case. If an adjournment cannot be avoided, the information should be provided to the National Probation Service in written form and a copy retained on the court file for the benefit of the sentencing court. However, the court must make clear to the offender that all sentencing options remain open including, in appropriate cases, committal for sentence to the Crown Court.
- For further guidance on when a PSR may be unnecessary see [Criminal Practice Direction \[link\]](#)

Low	Medium	High
<p>Offences only just cross community order threshold, where the seriousness of the offence or the nature of the offender’s record means that a discharge or fine is inappropriate</p>	<p>Offences that obviously fall within the community order band</p>	<p>Offences only just fall below the custody threshold or the custody threshold is crossed but a community order is more appropriate in the circumstances</p>
<p>In general, only one requirement will be appropriate and the length may be curtailed if additional requirements are necessary</p>		<p>More intensive sentences which combine two or more requirements may be appropriate</p>
<ul style="list-style-type: none"> • Suitable requirements might include: • Any appropriate rehabilitative requirement(s) 	<ul style="list-style-type: none"> • Suitable requirements might include: • Any appropriate rehabilitative requirement(s) 	<ul style="list-style-type: none"> • Suitable requirements might include: • Any appropriate rehabilitative requirement(s)

- | | | |
|--|---|---|
| <ul style="list-style-type: none"> • 40 – 80 hours of unpaid work • Curfew requirement for example up to 16 hours per day for a few weeks • Exclusion requirement, for a few months • Prohibited activity requirement • Attendance centre requirement (where available) | <ul style="list-style-type: none"> • 80 – 150 hours of unpaid work • Curfew requirement for example up to 16 hours for 2 – 3 months • Exclusion requirement lasting in the region of 6 months • Prohibited activity requirement | <ul style="list-style-type: none"> • 150 – 300 hours of unpaid work • Curfew requirement for example up to 16 hours per day for 4 – 12 months • Exclusion requirement lasting in the region of 12 months |
|--|---|---|

If order does not contain a punitive requirement, suggested fine levels are indicated below:

BAND A FINE**BAND B FINE****BAND C FINE**

Custodial sentences

Sentencing flowcharts are available at [Imposition of Community and Custodial Sentences guideline](#)

The approach to the imposition of a custodial sentence should be as follows:

1) Has the custody threshold been passed?

- A custodial sentence must not be imposed unless the offence or the combination of the offence and one or more offences associated with it was so serious that neither a fine alone nor a community sentence can be justified for the offence.
- There is no general definition of where the custody threshold lies. The circumstances of the individual offence and the factors assessed by offence-specific guidelines will determine whether an offence is so serious that neither a fine alone nor a community sentence can be justified. Where no offence specific guideline is available to determine seriousness, the harm caused by the offence, the culpability of the offender and any previous convictions will be relevant to the assessment.
- The clear intention of the threshold test is to reserve prison as a punishment for the most serious offences.

2) Is it unavoidable that a sentence of imprisonment be imposed?

- Passing the custody threshold does not mean that a custodial sentence should be deemed inevitable. Custody should not be imposed where a community order could provide sufficient restriction on an offender's liberty (by way of punishment) while addressing the rehabilitation of the offender to prevent future crime.
- 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.

3) What is the shortest term commensurate with the seriousness of the offence?

- In considering this the court must NOT consider any licence or post sentence supervision requirements which may subsequently be imposed upon the offender's release.

4) Can the sentence be suspended?

- A suspended sentence **MUST NOT** be imposed as a more severe form of community order. A suspended sentence is a custodial sentence. **Sentencers should be clear that they would impose an immediate custodial sentence if the power to suspend were not available.** If not, a non-custodial sentence should be imposed.
- The following factors should be weighed in considering whether it is possible to suspend the sentence:

Factors indicating that it would not be appropriate to suspend a custodial sentence

- Offender presents a risk/danger to the public
- Appropriate punishment can only be achieved by immediate custody
- History of poor compliance with court orders

Factors indicating that it may be appropriate to suspend a custodial sentence

- Realistic prospect of rehabilitation
- Strong personal mitigation
- Immediate custody will result in significant harmful impact upon others

The imposition of a custodial sentence is both punishment and a deterrent. To ensure that the overall terms of the suspended sentence are commensurate with offence seriousness, care must be taken to ensure requirements imposed are not excessive. A court wishing to impose onerous or intensive requirements should reconsider whether a community sentence might be more appropriate.

Pre-sentence report

Whenever the court reaches the provisional view that:

- the custody threshold has been passed; and, if so
- the length of imprisonment which represents the shortest term commensurate with the seriousness of the offence;

the court should obtain a pre-sentence report, whether verbal or written, **unless** the court considers a report to be unnecessary. Ideally a pre-sentence report should be completed on the same day to avoid adjourning the case.

- **For further guidance on when a PSR may be unnecessary see [Criminal Practice Direction \[link\]](#)**

Magistrates: Consult your legal adviser before deciding to sentence to custody without a pre-sentence report.

Suspended Sentences: General Guidance

- i) The guidance regarding pre-sentence reports applies if suspending custody.
- ii) If the court imposes a term of imprisonment of between 14 days and 2 years (subject to magistrates' courts sentencing powers), it may suspend the sentence for between 6 months and 2 years (the 'operational period'). The time for which a sentence is suspended should reflect the length of the sentence; up to 12 months might normally be appropriate for a suspended sentence of up to 6 months.
- iii) Where the court imposes two or more sentences to be served consecutively, the court may suspend the sentence where the aggregate of the terms is between 14 days and 2 years (subject to magistrates' courts sentencing powers).
- iv) When the court suspends a sentence, it may impose one or more requirements for the offender to undertake in the community. The requirements are identical to those available for community orders, see the guideline on [Imposition of Community and Custodial Sentences](#).
- v) A custodial sentence that is suspended should be for the same term that would have applied if the sentence was to be served immediately.

For sentencing flowcharts see the guideline on [Imposition of Community and Custodial Sentences](#).

Statutory aggravating factors

Short description:

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

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

More information:

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.

1. Previous convictions are considered at step two in the Council's offence specific guidelines.
2. The primary significance of previous convictions (including convictions in other jurisdictions) is the extent to which they indicate trends in offending behaviour and possibly the offender's response to earlier sentences;
3. Previous convictions are normally **relevant** to the current offence when they are of a similar type;
4. Previous convictions of a type different from the current offence **may** be relevant where they are an indication of persistent offending or escalation and/or a failure to comply with previous court orders;
5. 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;
6. If the offender received a non-custodial disposal for the previous offence, a court should not necessarily move to a custodial sentence for the fresh offence;
7. In cases involving significant persistent offending, the community and custody thresholds may be crossed even though the current offence normally warrants a lesser sentence. If a custodial sentence is it should be proportionate and kept to the necessary minimum.
8. 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.
9. Where the previous offence is particularly old it will normally have little relevance for the current sentencing exercise;
10. The court should consider the time gap since the previous conviction and the reason for it. Where there has been a significant gap between previous and current convictions or a reduction in the frequency of offending this may indicate that the offender has made attempts to desist from offending in which case the aggravating effect of the previous offending will diminish.
11. 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.
12. When considering the totality of previous offending a court should take a rounded view of the previous crimes and not simply aggregate the individual offences.
13. Where information is available on the context of previous offending this may assist the court in assessing the relevance of that prior offending to the current offence.

Short description:

Offence committed whilst on bail

More information:

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

S143 (3) Criminal Justice Act 2003 states:

In considering the seriousness of any offence committed while the offender was on bail, the court must treat the fact that it was committed in those circumstances as an aggravating factor.

Short description:

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.

More information:

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

See below for the statutory provisions.

- **Note the requirement for the court to state that the offence has been aggravated by the relevant hostility.**
- **Where the element of hostility is core to the offending, the aggravation will be higher than where it plays a lesser role.**

Increase in sentences for racial or religious aggravation

s145(2) of the Criminal Justice Act 2003 states:

If the offence was racially or religiously aggravated, the court—

(a) must treat that fact as an aggravating factor, and

(b) must state in open court that the offence was so aggravated.

An offence is racially or religiously aggravated for these purposes if—

- at the time of committing the offence, or immediately before or after doing so, the offender demonstrates towards the victim of the offence, hostility based on the victim's membership (or presumed membership) of a racial or religious group; **or**
- the offence is motivated (wholly or partly) by hostility towards members of a racial or religious group based on their membership of that group.

“membership”, in relation to a racial or religious group, includes association with members of that group;

“presumed” means presumed by the offender.

It is immaterial whether or not the offender's hostility is also based, to any extent, on any other factor not mentioned above.

“racial group” means a group of persons defined by reference to race, colour, nationality (including citizenship) or ethnic or national origins.

“religious group” means a group of persons defined by reference to religious belief or lack of religious belief.

Increase in sentences for aggravation related to disability, sexual orientation or transgender identity

s146 of the Criminal Justice Act 2003 states:

(1) This section applies where the court is considering the seriousness of an offence committed in any of the circumstances mentioned in subsection (2).

(2) Those circumstances are—

(a) that, at the time of committing the offence, or immediately before or after doing so, the offender demonstrated towards the victim of the offence hostility based on—

- (i) the sexual orientation (or presumed sexual orientation) of the victim,
- (ii) a disability (or presumed disability) of the victim, or
- (iii) the victim being (or being presumed to be) transgender, or

(b) that the offence is motivated (wholly or partly)—

- (i) by hostility towards persons who are of a particular sexual orientation,
- (ii) by hostility towards persons who have a disability or a particular disability or
- (iii) by hostility towards persons who are transgender.

(3) The court—

(a) must treat the fact that the offence was committed in any of those circumstances as an aggravating factor, and

(b) must state in open court that the offence was committed in such circumstances.

(4) It is immaterial for the purposes of paragraph (a) or (b) of subsection (2) whether or not the offender's hostility is also based, to any extent, on any other factor not mentioned in that paragraph.

(5) In this section “disability” means any physical or mental impairment.

(6) In this section references to being transgender include references to being transsexual, or undergoing, proposing to undergo or having undergone a process or part of a process of gender reassignment.

Short description:

Offence was committed against an emergency worker acting in the exercise of functions as such a worker.

More information:

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

See below for the statutory provisions.

- **Note the requirement for the court to state that the offence has been so aggravated.**
- **Note this statutory factor only applies to certain violent or sexual offences as listed below which were committed on or after 13 November 2018.**
- **For other offences the factor ‘Victim was providing a public service or performing a public duty at the time of the offence’ can be applied where relevant.**

The Assaults on Emergency Worker (Offences) Act 2018 states:

2 Aggravating factor

- (1) This section applies where—
- (a) the court is considering for the purposes of sentencing the seriousness of an offence listed in subsection (3), and
 - (b) the offence was committed against an emergency worker acting in the exercise of functions as such a worker.
- (2) The court—
- (a) must treat the fact mentioned in subsection (1)(b) as an aggravating factor (that is to say, a factor that increases the seriousness of the offence), and
 - (b) must state in open court that the offence is so aggravated.
- (3) The offences referred to in subsection (1)(a) are—
- (a) an offence under any of the following provisions of the Offences against the Person Act 1861—
 - (i) section 16 (threats to kill);
 - (ii) section 18 (wounding with intent to cause grievous bodily harm);
 - (iii) section 20 (malicious wounding);
 - (iv) section 23 (administering poison etc);
 - (v) section 28 (causing bodily injury by gunpowder etc);
 - (vi) section 29 (using explosive substances etc with intent to cause grievous bodily harm);
 - (vii) section 47 (assault occasioning actual bodily harm);
 - (b) an offence under section 3 of the Sexual Offences Act 2003 (sexual assault);
 - (c) manslaughter;
 - (d) kidnapping;
 - (e) an ancillary offence in relation to any of the preceding offences.
- (4) For the purposes of subsection (1)(b), the circumstances in which an offence is to be taken as committed against a person acting in the exercise of functions as an emergency worker include circumstances where the offence takes place at a time when the person is not at work but is carrying out functions which, if done in work time, would have been in the exercise of functions as an emergency worker.
- (5) In this section—
- “ancillary offence”, in relation to an offence, means any of the following—
 - (a) aiding, abetting, counselling or procuring the commission of the offence;
 - (b) an offence under Part 2 of the Serious Crime Act 2007 (encouraging or assisting crime) in relation to the offence;
 - (c) attempting or conspiring to commit the offence;
 - “emergency worker” has the meaning given by section 3.
- (6) Nothing in this section prevents a court from treating the fact mentioned in subsection (1)(b) as an aggravating factor in relation to offences not listed in subsection (3).
- (7) This section applies only in relation to offences committed on or after the day it comes into force.

3 Meaning of “emergency worker”

- (1) In sections 1 and 2, “emergency worker” means—
- (a) a constable;
 - (b) a person (other than a constable) who has the powers of a constable or is otherwise employed for police purposes or is engaged to provide services for police purposes;
 - (c) a National Crime Agency officer;
 - (d) a prison officer;

(e) a person (other than a prison officer) employed or engaged to carry out functions in a custodial institution of a corresponding kind to those carried out by a prison officer;

(f) a prisoner custody officer, so far as relating to the exercise of escort functions;

(g) a custody officer, so far as relating to the exercise of escort functions;

(h) a person employed for the purposes of providing, or engaged to provide, fire services or fire and rescue services;

(i) a person employed for the purposes of providing, or engaged to provide, search services or rescue services (or both);

(j) a person employed for the purposes of providing, or engaged to provide—

(i) NHS health services, or

(ii) services in the support of the provision of NHS health services, and whose general activities in doing so involve face to face interaction with individuals receiving the services or with other members of the public.

(2) It is immaterial for the purposes of subsection (1) whether the employment or engagement is paid or unpaid.

(3) In this section—

“custodial institution” means any of the following—

(a) a prison;

(b) a young offender institution, secure training centre, secure college or remand centre;

(c) a removal centre, a short-term holding facility or pre-departure accommodation, as defined by section 147 of the Immigration and Asylum Act 1999;

(d) services custody premises, as defined by section 300(7) of the Armed Forces Act 2006;

“custody officer” has the meaning given by section 12(3) of the Criminal Justice and Public Order Act 1994;

“escort functions”—

(a) in the case of a prisoner custody officer, means the functions specified in section 80(1) of the Criminal Justice Act 1991;

(b) in the case of a custody officer, means the functions specified in paragraph 1 of Schedule 1 to the Criminal Justice and Public Order Act 1994;

“NHS health services” means any kind of health services provided as part of the health service continued under section 1(1) of the National Health Service Act 2006 and under section 1(1) of the National Health Service (Wales) Act 2006;

“prisoner custody officer” has the meaning given by section 89(1) of the Criminal Justice Act 1991.

Other aggravating factors:

Short description:

A1. Commission of offence whilst under the influence of alcohol or drugs

More information:

<p>Care should be taken to avoid double counting factors including those already taken into account in assessing culpability or harm or those inherent in the offence</p>
--

- The fact that an offender is **voluntarily** intoxicated at the time of the offence will tend to increase the seriousness of the offence provided that the intoxication has **contributed to the offending**.
- In the case of a person addicted to drugs or alcohol the intoxication may be considered not to be voluntary, but the court should have regard to the extent to which the offender has engaged with any assistance in dealing with the addiction in making that assessment.
- An offender who has voluntarily consumed drugs and/or alcohol must accept the consequences of the behaviour that results, even if it is out of character.

Short description:

A2. Offence was committed as part of a group

More information:

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

The mere membership of a group (two or more persons) should not be used to increase the sentence, but where the **offence was committed as part** of a group this will normally make it more serious because:

- the **harm** caused (both physical or psychological) or the potential for harm may be greater and/or
- the **culpability** of the offender may be higher (the role of the offender within the group will be a relevant consideration).

Culpability based on role in group offending could range from:

Higher culpability indicated by a leading role in the group and/or the involvement by the offender of others through coercion, intimidation or exploitation, to

Lower culpability indicated by a lesser or subordinate role under direction and/or involvement of the offender through coercion, intimidation or exploitation.

Where the offending is part of an organised criminal network, this will make it more serious, and the role of the offender in the organisation will also be relevant.

When sentencing young adult offenders (typically aged 18-25), consideration should also be given to the guidance on the mitigating factor relating to age and lack of maturity when considering the significance of group offending.

Short description:

A3. Offence involved use or threat of use of a weapon

More information:

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

- A 'weapon' can take many forms and may include a shod foot
- The use or production of a weapon has relevance
 - to the **culpability** of the offender where it indicates planning or intention to cause harm; and
 - to the **harm** caused (both physical or psychological) or the potential for harm.
- Relevant considerations will include:
 - the dangerousness of the weapon;
 - whether the offender brought the weapon to the scene, or just used what was available on impulse;
 - whether the offender made or adapted something for use as a weapon;
 - the context in which the weapon was threatened, used or produced.

Short description:

A4. Planning of an offence

More information:

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

- Evidence of planning normally indicates a higher level of intention and pre-meditation which increases the level of culpability.
- Planning may be inferred from the scale and sophistication of the offending
- The greater the degree of planning the greater the culpability

Short description:

A5. Commission of the offence for financial gain

More information:

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

- Where an offence (which is not one which by its nature is an acquisitive offence) has been committed wholly or in part for financial gain or the avoidance of cost, this will increase the seriousness.
- Where the offending is committed in a commercial context for financial gain or the avoidance of costs, this will normally indicate a higher level of culpability.
 - examples would include, but are not limited to, dealing in unlawful goods, failing to disclose relevant matters to an authority or regulator, failing to comply with a regulation or failing to obtain the necessary licence or permission in order to avoid costs.
 - offending of this type can undermine legitimate businesses.
- See the guidance on fines if considering a financial penalty

Short description:

A6. High level of profit from the offence

More information:

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

- A high level of profit is likely to indicate:
 - high culpability in terms of planning and
 - a high level of harm in terms of loss caused to victims or the undermining of legitimate businesses
- In most situations a high level of gain will be a factor taken in to account at step one – care should be taken to avoid double counting.
- See the guidance on fines if considering a financial penalty

Short description:

A7. Abuse of trust or dominant position

More information:

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

- In order for an abuse of trust to make an offence more serious the relationship between the offender and victim(s) must be one that would give rise to the offender having a significant level of responsibility towards the victim(s) on which the victim(s) would be entitled to rely.
- Abuse of trust may occur in many factual situations. Examples may include relationships such as teacher and pupil, parent and child, professional adviser and client, or carer (whether paid or unpaid) and dependant. It may also include ad hoc situations such as a late-night taxi driver and a lone passenger. These examples are not exhaustive and do not necessarily indicate that abuse of trust is present.
- Where an offender has been given an inappropriate level of responsibility, abuse of trust is unlikely to apply.
- A close examination of the facts is necessary and a clear justification should be given if abuse of trust is to be found.

Short description:

A8. Gratuitous degradation of victim / maximising distress to victim

More information:

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

Where an offender deliberately causes **additional** harm to a victim over and above that which is an essential element of the offence - this will increase seriousness. Examples may include, but are not limited to, posts of images on social media designed to cause additional distress to the victim (where not separately charged).

Short description:

A9. Vulnerable victim

More information:

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

- An offence is more serious if the victim is vulnerable because of personal circumstances such as (but not limited to) age, illness or disability (unless the vulnerability of the victim is an element of the offence).
- Other factors such as the victim being isolated, incapacitated through drink or being in an unfamiliar situation **may** lead to a court considering that the offence is more serious.
- The extent to which any vulnerability may impact on the sentence is a matter for the court to weigh up in each case.
- Culpability will be increased if the offender **targeted** a victim because of an actual or perceived vulnerability.
- Culpability will be increased if the victim is made vulnerable by the actions of the offender (such as a victim who has been intimidated or isolated by the offender).
- Culpability is increased if an offender persisted in the offending once it was obvious that the victim was vulnerable (for example continuing to attack an injured victim).
- The level of harm (physical, psychological or financial) is likely to be increased if the victim is vulnerable.

Short description:

A10. Victim was providing a public service or performing a public duty at the time of the offence

More information:

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

This reflects:

- the fact that people in public facing roles are more exposed to the possibility of harm and consequently more vulnerable and/or
- the fact that someone is working for the public good merits the additional protection of the courts.

Care should be taken to avoid double counting where the statutory aggravating factor relating to emergency workers applies.

Short description:

A11. Other(s) put at risk of harm by the offending

More information:

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

- Where there is risk of harm to other(s) not taken in account at step one and not subject to a separate charge, this makes the offence more serious.
- Dealing with a risk of harm involves consideration of both the likelihood of harm occurring and the extent of it if it does.

Short description:

A12. Offence committed in the presence of other(s) (especially children)

More information:

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

- This reflects the psychological harm that may be caused to those who witnessed the offence.
- The presence of one or more children may in some situations make the primary victim more vulnerable – for example an adult may be less able to resist the offender if concerned about the safety or welfare of children present.

Short description:

A13. Actions after the event including but not limited to attempts to cover up/ conceal evidence

More information:

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

The more sophisticated, extensive or persistent the actions after the event, the more likely they are to increase the seriousness of the offence.

When sentencing young adult offenders (typically aged 18-25), consideration should also be given to the guidance on the mitigating factor relating to age and lack of maturity when considering the significance of such conduct.

Where any such actions are the subject of separate charges, they should be taken into account when assessing totality at step seven.

Short description:

A14. Blame wrongly placed on other(s)

More information:

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

- 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.

- This factor will **not** be engaged where an offender has simply exercised his or her right not to assist the investigation or accept responsibility for the offending.
- When sentencing young adult offenders (typically aged 18-25), consideration should also be given to the guidance on the mitigating factor relating to age and lack of maturity when considering the significance of such conduct.

Short description:

A15. Failure to respond to warnings or concerns expressed by others about the offender's behaviour

More information:

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

Where an offender has had the benefit of warnings or advice about their conduct but has failed to heed it, this would make the offender more blameworthy.

This may particularly be the case when:

- such warning(s) or advice were of an official nature or from a professional source and/or
- the warning(s) were made at the time of or shortly before the commission of the offence.

Short description:

A16. Offence committed on licence or post sentence supervision or while subject to court order(s)

More information:

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

- An offender who is subject to licence or post sentence supervision is under a particular obligation to desist from further offending.
- Commission of an offence while subject to a **relevant** court order makes the offence more serious.
- The extent to which the offender has complied with the conditions of a licence or order will be a relevant consideration.
- Where the offender is dealt with separately for a breach of a licence or order regard should be had to totality (see step seven)
- Care should be taken to avoid double counting matters taken into account when considering previous convictions.

Short description:

A17. Offence committed in custody

More information:

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

- Offences committed in custody are more serious because they undermine the fundamental need for control and order which is necessary for the running of prisons and maintaining safety.
- Generally the sentence for the new offence will be consecutive to the sentence being served as it will have arisen out of an unrelated incident. The court must have regard to the totality of the offender's criminality when passing the second sentence, to ensure that the total sentence to be served is just and proportionate. Refer to the [Totality guideline](#) for detailed guidance.
- Care should be taken to avoid double counting matters taken into account when considering previous convictions.

Short description:

A18. Offences taken into consideration

More information:

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

Taken from the [Offences Taken into Consideration Definitive Guideline](#):

General principles

When sentencing an offender who requests offences to be taken into consideration (TICs), courts should pass a total sentence which reflects all the offending behaviour. The sentence must be just and proportionate and must not exceed the statutory maximum for the conviction offence.

Offences to be Taken into Consideration

The court has discretion as to whether or not to take TICs into account. In exercising its discretion the court should take into account that TICs are capable of reflecting the offender's overall criminality. The court is likely to consider that the fact that the offender has assisted the police (particularly if the offences would not otherwise have been detected) and avoided the need for further proceedings demonstrates a genuine determination by the offender to 'wipe the slate clean'.

It is generally **undesirable** for TICs to be accepted in the following circumstances:

- where the TIC is likely to attract a greater sentence than the conviction offence;
- where it is in the public interest that the TIC should be the subject of a separate charge;
- where the offender would avoid a prohibition, ancillary order or similar consequence which it would have been desirable to impose on conviction. For example:
 - where the TIC attracts mandatory disqualification or endorsement and the offence(s) for which the defendant is to be sentenced do not;
- where the TIC constitutes a breach of an earlier sentence;
- where the TIC is a specified offence for the purposes of section 224 of the Criminal Justice Act 2003, but the conviction offence is non-specified; or

- where the TIC is not founded on the same facts or evidence or part of a series of offences of the same or similar character (unless the court is satisfied that it is in the interests of justice to do so).

Jurisdiction

The magistrates' court cannot take into consideration an indictable only offence.

The Crown Court can take into account summary only offences provided the TICs are founded on the same facts or evidence as the indictable charge, or are part of a series of offences of the same or similar character as the indictable conviction offence

Procedural safeguards

A court should generally only take offences into consideration if the following procedural provisions have been satisfied:

- the police or prosecuting authorities have prepared a schedule of offences (TIC schedule) that they consider suitable to be taken into consideration. The TIC schedule should set out the nature of each offence, the date of the offence(s), relevant detail about the offence(s) (including, for example, monetary values of items) and any other brief details that the court should be aware of;
- a copy of the TIC schedule must be provided to the defendant and his representative (if he has one) before the sentence hearing. The defendant should sign the TIC schedule to provisionally admit the offences;
- at the sentence hearing, the court should ask the defendant in open court whether he admits each of the offences on the TIC schedule and whether he wishes to have them taken into consideration;
- if there is any doubt about the admission of a particular offence, it should not be accepted as a TIC. Special care should be taken with vulnerable and/or unrepresented defendants;
- if the defendant is committed to the Crown Court for sentence, this procedure must take place again at the Crown Court even if the defendant has agreed to the schedule in the magistrates' court.

Application

The sentence imposed on an offender should, in most circumstances, be increased to reflect the fact that other offences have been taken into consideration. The court should:

1. Determine the sentencing starting point for the conviction offence, referring to the relevant definitive sentencing guidelines. No regard should be had to the presence of TICs at this stage.
2. Consider whether there are any aggravating or mitigating factors that justify an upward or downward adjustment from the starting point.

The presence of TICs should generally be treated as an aggravating feature that justifies an adjustment from the starting point. Where there is a large number of TICs, it may be appropriate to move outside the category range, although this must be considered in the context of the case and subject to the principle of totality. The court is limited to the statutory maximum for the conviction offence.

3. Continue through the sentencing process including:
 - consider whether the frank admission of a number of offences is an indication of a defendant's remorse or determination and/ or demonstration of steps taken to address addiction or offending behaviour;

- any reduction for a guilty plea should be applied to the overall sentence;
- the principle of totality;
- when considering ancillary orders these can be considered in relation to any or all of the TICs, specifically:
 - compensation orders;
 - restitution orders

Short description:

A19. Offence committed in a domestic context

More information:

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

Refer to the [Overarching Principles: Domestic Abuse Definitive Guideline](#)

Short description:

A20. Offence committed in a terrorist context

More information:

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

Where there is a terrorist element to the offence, refer also to the [Terrorism Offences Definitive Guideline](#)

Short description:

A21. Location and/or timing of offence

More information:

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

- In general, an offence is not made more serious by the location and/or timing of the offence except in ways taken into account by other factors in this guideline (such as planning, vulnerable victim, offence committed in a domestic context, maximising distress to victim, others put at risk of harm by the offending, offence committed in the presence of others). Care should be taken to avoid double counting.
- Courts should be cautious about aggravating an offence by reason of it being committed for example at night, or in broad daylight, in a crowded place or in an isolated place unless it also indicates increased harm or culpability not already accounted for.
- An offence may be more serious when it is committed in places in which there is a particular need for discipline or safety such as prisons, courts, schools or hospitals.

Short description:

A22. Established evidence of community/ wider impact

More information:

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

- This factor should increase the sentence only where there is clear evidence of wider harm not already taken into account elsewhere. A community impact statement will assist the court in assessing the level of impact.
- For issues of prevalence see the separate guidance.

Prevalence

- Sentencing levels in offence specific guidelines take account of collective social harm. Accordingly offenders should normally be sentenced by straightforward application of the guidelines without aggravation for the fact that their activity contributed to a harmful social effect upon a neighbourhood or community.
- It is not open to a sentencer to increase a sentence for prevalence in ordinary circumstances or in response to a personal view that there is 'too much of this sort of thing going on in this area'.
- First, there must be evidence provided to the court by a responsible body or by a senior police officer.
- Secondly, that evidence must be before the court in the specific case being considered with the relevant statements or reports having been made available to the Crown and defence in good time so that meaningful representations about that material can be made.
- Even if such material is provided, a sentencer will only be entitled to treat prevalence as an aggravating factor if satisfied
 - that the level of harm caused in a particular locality is significantly higher than that caused elsewhere (and thus already inherent in the guideline levels);
 - that the circumstances can properly be described as exceptional; **and**
 - that it is just and proportionate to increase the sentence for such a factor in the particular case being sentenced.

Factors reducing seriousness or reflecting personal mitigation (factors are not listed in any particular order and are not exhaustive)

Short description:

M1. No previous convictions or no relevant/recent convictions

More information:

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

- First time offenders usually represent a lower risk of re-offending. Re-offending rates for first offenders are significantly lower than rates for repeat offenders. In addition, first offenders are normally regarded as less blameworthy than offenders who have

committed the same crime several times already. For these reasons first offenders receive a mitigated sentence.

- Where there are previous offences but these are old and /or are for offending of a different nature, the sentence will normally be reduced to reflect that the new offence is not part of a pattern of offending and there is therefore a lower likelihood of reoffending.
- When assessing whether a previous conviction is 'recent' the court should consider the time gap since the previous conviction and the reason for it.
- Previous convictions are likely to be 'relevant' when they share characteristics with the current offence (examples of such characteristics include, but are not limited to: dishonesty, violence, abuse of position or trust, use or possession of weapons, disobedience of court orders). In general the more serious the previous offending the longer it will retain relevance.

Short description:

M2. Good character and/or exemplary conduct

More information:

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

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 may reduce the sentence.

However, this factor is less likely to be relevant where the offending is very serious. Where an offender has used their good character or status to facilitate or conceal the offending it could be treated as an aggravating factor.

Short description:

M3. Remorse

More information:

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

The court will need to be satisfied that the offender is genuinely remorseful for the offending behaviour in order to reduce the sentence (separate from any guilty plea reduction at step four).

Lack of remorse should never be treated as an aggravating factor.

Short description:

M4. Self-reporting

More information:

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

Where an offender has self-reported to the authorities, particularly in circumstances where the offence may otherwise have gone undetected, this should reduce the sentence (separate from any guilty plea reduction at step four).

Short description:

M5. Cooperation with the investigation/ early admissions

More information:

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

Assisting or cooperating with the investigation and /or making pre-court admissions may ease the effect on victims and witnesses and save valuable police time justifying a reduction in sentence (separate from any guilty plea reduction at step four).

Short description:

M6. Little or no planning

More information:

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

Where an offender has committed the offence with little or no prior thought, this is likely to indicate a lower level of culpability and therefore justify a reduction in sentence.

However, impulsive acts of unprovoked violence or other types of offending may indicate a propensity to behave in a manner that would not normally justify a reduction in sentence.

Short description:

M7. The offender was in a lesser or subordinate role if acting with others / performed limited role under direction

More information:

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

Whereas acting as part of a group may make an offence more serious, if the offender's role was minor this may indicate lower culpability and justify a reduction in sentence.

Short description:

M8. Involved through coercion, intimidation or exploitation

More information:

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

- Where this applies it will reduce the culpability of the offender.
- This factor may be of particular relevance where the offender has been the victim of domestic abuse, trafficking or modern slavery, but may also apply in other contexts.
- Courts should be alert to factors that suggest that an offender may have been the subject of coercion, intimidation or exploitation which the offender may find difficult to articulate, and where appropriate ask for this to be addressed in a PSR.
- This factor **may** indicate that the offender is vulnerable and would find it more difficult to cope with custody or to complete a community order.

Short description:

M9. Limited awareness or understanding of the offence

More information:

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

The factor may apply to reduce the culpability of an offender

- acting alone who has not appreciated the seriousness of the offence **or**
- where an offender is acting with others and does not appreciate the extent of the overall offending.

If the offender had genuinely failed to understand or appreciate the seriousness of the offence, the sentence may be reduced from that which would have applied if the offender had understood the full extent of the offence and the likely harm that would be caused.

Where an offender lacks capacity to understand the full extent of the offending see the guidance under 'Mental disorder or learning disability' below.

Short description:

M10. Little or no financial gain

More information:

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

Where an offence (which is not one which by its nature is an acquisitive offence) is committed in a context where financial gain could arise, the culpability of the offender may

be reduced where it can be shown that the offender **did not seek to gain financially** from the conduct and did not in fact do so.

Short description:

M11. Delay since apprehension

More information:

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

Where there has been an **unreasonable** delay in proceedings since apprehension which **is not the fault of the offender**, and which has had a detrimental effect on the offender, the court may take this into account by reducing the sentence.

Note: No fault should attach to an offender for not admitting an offence and/or putting the prosecution to proof of its case.

Short description:

M12. Activity originally legitimate

More information:

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

Where the offending arose from an activity which was originally legitimate, but became unlawful (for example because of a change in the offender's circumstances or a change in regulations), this **may** indicate lower culpability and thereby a reduction in sentence.

This factor will not apply where the offender has used a legitimate activity to mask a criminal activity.

Short description:

M13. Age and/or lack of maturity

More information:

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

Age and/or lack of maturity can affect:

- the offender's responsibility for the offence and
- the effect of the sentence on the offender.

Either or both of these considerations may justify a reduction in the sentence.

The emotional and developmental age of an offender is of at least equal importance to their chronological age (if not greater).

In particular young adults (typically aged 18-25) are still developing neurologically and consequently may be less able to:

- evaluate the consequences of their actions
- limit impulsivity
- limit risk taking

Young adults are likely to be susceptible to peer pressure and are more likely to take risks or behave impulsively when in company with their peers.

Environment plays a role in neurological development and factors such as childhood adversity including deprivation and/or abuse will affect development.

An immature offender may find it particularly difficult to cope with custody and therefore may be more susceptible to self-harm in custody.

An immature offender may find it particularly difficult to cope with the requirements of a community order without appropriate support.

There is a greater capacity for change in immature offenders and they may be receptive to opportunities to address their offending behaviour and change their conduct.

Where the offender is a care leaver the court should enquire as to any effect a sentence may have on the offender's ability to make use of support from the local authority. (Young adult care leavers are entitled to time limited support. Leaving care services may change at the age of 21 and cease at the age of 25, unless the young adult is in education at that point). See also the Sentencing Children and Young People Guideline (paragraphs 1.16 and 1.17).

Where an offender has turned 18 between the commission of the offence and conviction the court should take as its starting point the sentence likely to have been imposed on the date at which the offence was committed, but taking into account the purposes of sentencing adult offenders. See also the Sentencing Children and Young People Guideline (paragraphs 6.1 to 6.3).

When considering a custodial or community sentence for a young adult the National Probation Service should address these issues in a PSR.

Short description:

M14. Sole or primary carer for dependent relatives

More information:

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

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. Where custody is unavoidable consideration of the impact on dependants may be relevant to

the length of the sentence imposed. For more serious offences where a substantial period of custody is appropriate, this factor will carry less weight.

In addition when sentencing an offender who is pregnant relevant considerations may include:

- any effect of the sentence on the health of the offender and
- any effect of the sentence on the unborn child

In such situations the court should ask the Probation Service to address these issues in a PSR.

Short description:

M15. Physical disability or serious medical conditions requiring urgent, intensive or long-term treatment

More information:

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

Such conditions as may affect the impact of a sentence on the offender may justify a reduction in sentence.

Short description:

M16. Mental disorder or learning disability

More information:

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

Mental disorders and learning disabilities are different things, although an individual may suffer from both. A **learning disability** is a permanent condition developing in childhood, whereas **mental illness** (or a mental health problem) can develop at any time, and is not necessarily permanent; people can get better and resolve mental health problems with help and treatment.

In the context of sentencing a broad interpretation of the terms 'mental disorder' and learning disabilities' should be adopted to include:

- Offenders with an intellectual impairment (low IQ);
- Offenders with a cognitive impairment such as (but not limited to) dyslexia, attention deficit hyperactivity disorder (ADHD);
- Offenders with an autistic spectrum disorder (ASD) including Asperger's syndrome;
- Offenders with a personality disorder;
- Offenders with a mental illness.

Offenders may have a combination of the above conditions.

Sentencers should be alert to the fact that not all mental disorders or learning disabilities are visible or obvious.

A mental disorder or learning disability can affect both:

1. the offender's responsibility for the offence and
2. the impact of the sentence on the offender.

The court will be assisted by a PSR and, where appropriate, medical reports (including from court mental health teams) in assessing:

1. the degree to which a mental disorder or learning disability has reduced the offender's responsibility for the offence. This may be because the condition had an impact on the offender's ability to understand the consequences of their actions, to limit impulsivity and/or to exercise self-control.
 - a relevant factor will be the degree to which a mental disorder or learning disability has been exacerbated by the actions of the offender (for example by the **voluntary** abuse of drugs or alcohol or by **voluntarily** failing to follow medical advice);
 - in considering the extent to which the offender's actions were voluntary, the extent to which a mental disorder or learning disability has an impact on the offender's ability to exercise self-control or to engage with medical services will be a relevant consideration.
2. any effect of the mental disorder or learning disability on the impact of the sentence on the offender; a mental disorder or learning disability may make it more difficult for the offender to cope with custody or comply with a community order.

Short description:

M17. Determination and /or demonstration of steps having been taken to address addiction or offending behaviour

More information:

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

Where offending is driven by or closely associated with drug or alcohol abuse (for example stealing to feed a habit, or committing acts of disorder or violence whilst drunk) a commitment to address the underlying issue may justify a reduction in sentence. This will be particularly relevant where the court is considering whether to impose a sentence that focuses on rehabilitation.

Similarly, a commitment to address other underlying issues that may influence the offender's behaviour may justify the imposition of a sentence that focusses on rehabilitation.

The court will be assisted by a PSR in making this assessment.

Proposed changes to definitive guidelines to reflect legislative and other external changes and improve clarity and consistency across guidelines.

[This list is in summary note form only. If agreed by the Council a comprehensive list of proposed changes and the guidelines to which they would apply will be provided at consultation]

1. Time spent on remand/ bail

All guidelines to which this applies to have the wording used in the child cruelty guidelines:

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.

2. Dangerousness

For specified offences not subject to a life sentence:
In the title section of the guideline:

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

At the relevant step (typically step 5) of the guideline:

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 an extended sentence (section 226A).

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

For specified offences carrying a life sentence and subject to the ‘two strikes’ provisions:
In the title section:

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

This is an offence listed in Part 1 of Schedule 15B for the purposes of section 224A (life sentence for a second listed offence) and section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

At the relevant step (typically step 5) of the guideline:

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.

3. Maximum sentence

Fines:

There is some inconsistency as to how the maximum sentence is expressed in the title section of guidelines, in some cases it is x years; custody and/or unlimited fine. In others x years custody. It is proposed that only where a fine is an option within a guideline that reference is made to the statutory maximum fine. Where the maximum fine is other than unlimited (e.g. level 3 fine) a link should be provided to a table giving the maximum amounts for each level.

Either way offences:

Most guidelines for either way offences give just one maximum sentence (effectively that for sentence on indictment) but some give the maximum when tried summarily and the maximum on indictment. It is proposed to only include the summary maximum if it is other than 6 months/unlimited fine

Changes to maximum sentence:

Where the change has been made since the guideline was issued a note should be included in the title section giving the date of the change and the 'before' and 'after' levels. If the change affects the applicability of the guideline the note should acknowledge this.

Guidelines where a change in the maximum sentence has not been reflected:

Causing death by disqualified driving – maximum has increased from two to 10 years.

4. Other external changes

References to obtaining financial information in guidelines for sentencing organisations: In the Environmental, Health and Safety, and Food Safety guidelines for organisations the following text is included:

For health trusts: the independent regulator of NHS Foundation Trusts is Monitor. It publishes quarterly reports and annual figures for the financial strength and stability of trusts from which the annual income can be seen, available via the [Monitor website](#). Detailed analysis of expenditure or reserves is unlikely to be called for.

Info on health trust in H&S g/l/s

Information on health trusts is no longer available on the Monitor website. The reference needs to be updated to direct users to the correct source of information.

Change references to 'Offence committed on licence' in the assault, burglary, dogs, fraud and environmental guidelines to 'Offence committed on licence or post sentence supervision'. This will ensure consistency across guidelines.

Draft Policy for Making changes to digital guidelines on the Sentencing Council website or app

1 Typographical errors in guidelines

1.1 Where it comes to the attention of the Council that there is an error in a definitive sentencing guideline on the Sentencing Council website which is the result of text being incorrectly entered, the error will be corrected as soon as possible and the correction will be noted on a log of changes accessible on the website.

1.2 Where the change has the potential to have a material effect on sentencing, a news item will be published on the website drawing attention to the correction and communications will be sent to relevant stakeholders (e.g. magistrates, judiciary, prosecutors, probation etc).

2 Substantive errors in guidelines

2.1 Where it comes to the attention of the Council that there is a substantive error, omission or lack of clarity in a guideline which is due to an oversight by the Council, the issue will be discussed by the Council at the earliest opportunity and the views of relevant stakeholders sought as to the preferred remedy.

2.2 Where the Council is satisfied that the error can be corrected in a manner which gives effect to the Council's original intention (which has already been subject to consultation) the correction will be made, noted on the log of changes, a news item will be published on the website drawing attention to the correction and communications will be sent to relevant stakeholders.

2.3 Where Council considers that the error cannot be corrected without a substantive change to the guideline that was not contemplated at the consultation stage, it will consult on the proposed amendment in accordance with the requirements in section 120 of the Coroners and Justice Act 2009. This requires at a minimum consultation with the Lord Chancellor and the Justice Select Committee of the House of Commons, but in practice would involve consultation with other key stakeholders (and would be likely to include those who responded to the original consultation on that guideline). The length of the consultation will depend on the nature and complexity of the proposed change and the urgency of correcting the error. The Council may issue a temporary note to highlight the error pending correction.

3 External changes that make part of a guideline inaccurate, incomplete or misleading

3.1 Where changes to legislation or other external changes necessitate amendment to guidelines, the Council will consider the options for updating the relevant guidelines and then seek the views of relevant stakeholders as to the preferred remedy.

3.2 Where the required change is mandated by legislation and will not have wider implications for the guideline, the Council will make the minimum change required to bring the guideline in line with legislation, note it on the log of changes, publish a news item on the website drawing attention to the correction and send communications to relevant stakeholders.

3.3 Where the change is merely to update information or terminology in a guideline and will not have wider implications for the guideline, the Council will make the minimum change required to bring the guideline up to date, note it on the log of changes and, as appropriate, publish a news item on the website drawing attention to the correction and/or send communications to relevant stakeholders.

3.4 Where there are different options for addressing the change, which may make a substantive change to guideline(s) the Council will consult on the proposed amendment as at paragraph 2.3 above.

3.5 Where changes to legislation necessitate wholesale changes to a guideline, the Council will add the review of the relevant guideline(s) to its workplan and conduct a full consultation of the proposed revised guideline in the normal course of its work. In such situations, the Council may issue a note to highlight the limitations of the existing guideline while the review is being carried out.

4 Urgent cases

4.1 Section 123 of the Coroners and Justice Act 2009 gives the Council the power to issue or amend guidelines without consulting on a draft guideline where the urgency of the case makes it impractical to do so. While it reserves the right to rely on section 123 the Council does not envisage a situation where it would do so.