

**Sentencing Council meeting:**  
**Paper number:**

**14 June 2019**  
**SC(19)JUN08 – General Guideline and**  
**Expanded Explanations (paper 2)**  
**Maura McGowan**  
**Ruth Pope**  
**0207 071 5781**

**Lead Council member:**  
**Lead official:**

## **1 ISSUE**

1.1 This is the second of two papers to consider the responses to the expanded explanations consultation and to sign off both stages of the project to replace the *Seriousness* guideline.

## **2 RECOMMENDATION**

2.1 That the Council considers the responses to the remaining questions in the expanded explanations consultation and agrees to publish the expanded explanations and the General Guideline on 24 July 2019.

## **3 REMAINING CONSULTATION QUESTIONS**

*Changes to medium culpability in Fraud, Theft and Robbery guidelines*

3.1 All respondents who expressed a view supported the proposal to change *medium* culpability in these guidelines from:

- Other cases where characteristics for categories A or C are not present

To:

- Other cases that fall between categories A or C because:
  - Factors are present in A and C which balance each other out **and/or**
  - The offender's culpability falls between the factors as described in A and C

*Presentation of maximum sentences*

3.2 Views were sought on standardising the way in which guidelines refer to the maximum sentence for offences in guidelines:

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 will be provided to a table giving the maximum amounts for each level. See, for example, the [Drunk and Disorderly](#) guideline.

Either way offences:

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

3.3 Most respondents were in favour of these proposals. A couple were unsure exactly what was being proposed. Consultees also approved of the policy (already implemented in the case of Terrorism offences) of adding a note to a guideline when there has been a change to the statutory maximum sentence that has not been reflected in the guideline.

#### *Dangerousness*

3.4 Views were sought on proposals to update and standardise the wording relating to dangerous offenders and offenders who are subject to a life sentence for a second listed offence across all relevant guidelines. It was also proposed to provide a link to the Crown Court Compendium to assist sentencers where the application of these provisions may be more complicated (for example for historic offences).

3.5 Respondents agreed that the references should be updated and standardised and were in favour of providing a link to the Compendium.

#### **Question 20: Does the Council agree to implement the changes set out above?**

##### *Treating the General Guideline as an overarching guideline*

3.6 The consultation sought views on whether the General Guideline should be available as an overarching guideline that court can refer to when sentencing any offence. The consultation document set out the pros and cons:

The advantages of the explanations having wider application could include:

- Greater consistency in how factors are taken into account
- Greater transparency of how factors are taken into account
- A single point of reference for a wide range of issues, replacing and updating the *Seriousness* guideline.

The disadvantages could include:

- Possibility of irrelevant issues being brought into the sentencing process
- The particular considerations of individual offences being obscured by the application of non-specific guidance
- An increasing complication of the sentencing process.

3.7 There was a mixed response to this question but with the majority in favour of treating the General guideline as an overarching guideline:

This requires a balancing exercise and on balance this seems to be a sensible proposal ensuring that sentencers are lent the maximum possible assistance and guidance from the guidelines. The concern about over-complication is not a trivial

concern and guidance to sentencers should be as simple as possible, as clear as possible and, as much as possible, in one place.

Provided that sentencers are able to link through to the General guidelines as an overarching guideline then the virtues of designating the guideline as overarching will not be obscured. *CBA*

No objection to creating an overarching guideline to which sentencers can refer at their discretion. However in reality, whilst often working under time pressure, sentencers will tend to consider the factors listed in the offence specific guideline only. *West Sussex Bench*

We believe that:

1. The General guideline, which (when published as a definitive guideline) will contain all of the explanations in Annex A, should be treated as an overarching guideline that courts may refer to when sentencing any offence. We consider the advantages of doing so outweigh the disadvantages.
2. Magistrates will be able to determine (from the individual sentencing guideline for an offence) which are the relevant factors to be considered when assessing seriousness, and this together with their common sense and life experience will prevent them from introducing spurious and irrelevant factors into sentencing discussions and decisions.
3. Any additional guidance on “step one factors” is also considered helpful, if it is needed for particular offences. So the added Annex A explanations should be available for reference to sentencers when considering step one factors, if for a particular offence there was any uncertainty as to how such a factor should be interpreted. This will also help with consistency of sentencing. *West London Bench*

We agree that all Annex A factors should be included within the General guideline. Inclusion of all factors under each offence specific guideline may be impractical and risk omission to a specific guideline, where individual circumstances of case concern this factor. The Step 2 factors are a non-exhaustive list. We would observe that sentencers should not need to refer to the factors within the General guideline and should be reminded of this to ensure that there is no increase in the complexity of the sentencing process. *JCS*

We believe that it would be best as an overarching guideline, for those offences with an offence-specific guideline. This is because this will improve consistency and ensure that the information is readily available for sentencers, who can be relied upon to only take account of relevant factors. As all guidelines will be accessed digitally via iPads, this will make it easier to move between different guidelines or pages. *MA*

The General guideline *should* be treated as an overarching guideline. One possible cause of inconsistency in sentencing, despite the existence of offence-specific guidelines, is that factors that are relevant to sentencing are interpreted differently by different courts. Two courts may be applying the same guideline and applying the same factors but, if they are interpreting those factors differently, they are likely to reach different sentences. *Law Society*

- 3.8 The main dissenting voices were the Council of HM Circuit Judges and the CLSA:

We take the view the disadvantages outweigh the benefits. In particular, the sentencing process, already complicated, will become more so. *Council of HM Circuit Judges*

The CLSA always endorses the need to review the way in which the sentencing exercise is carried out. However, there is a need for certainty and clarity, and guidelines are just that, "Guidelines". The risk of making sentencing a less scientific, and based on the risk of irrelevant issues being brought into play concerns practitioners at every level. Sentencing should carry certainty at every level, overcomplicating the process makes certainty less likely. Too many subjective factors are at play. Personal mitigation can address the need for the Court to consider the appropriate sentence for the defendant, however, if too many factors come into play, the likelihood of uncertainty and abuse of the appeal process is all but inevitable. *CLSA*

3.9 If the General guideline is to be treated as an overarching guideline, consideration will need to be given to the subtitle of the guideline. As can be seen at Annex B, it is currently subtitled: 'For sentencing offences for which there is not offence specific guideline'. Perhaps the following wording could be used:

The General guideline may also be referred to when sentencing any offence for which the explanations in this guideline may be relevant.

**Question 21: Does the Council agree that the General Guideline should be made available as an overarching guideline?**

**Question 22: If so, how should the title/ preamble to the guideline indicate this?**

*The effect of the proposals on sentencing practice*

3.10 The consultation contained the question: 'Which, if any, of the proposed expanded factors or other proposed changes are likely to have an effect on sentencing practice? What do you think that effect would be?'.

3.11 In general respondents did not identify any significant impact on sentence levels, though several thought that there could be an increase in consistency. The changes to culpability B (see 3.1 above) were considered to be significant by many respondents, but the expected impact was not necessarily in one direction:

The explanation of age and lack of maturity will be helpful and have an impact, in my view, as the Court of Appeal's judgment on the topic has not filtered through to all courts as yet. I suspect that the changes to Culpability B in robbery and theft will have a material impact, because of the prevalence of offences covered by those guidelines, and the scale of the sentences to be imposed for robbery. *Mr Justice Warby*

It is difficult to be specific about the effects of these explanations. In general, we have not seen anything in the explanations that comes as a big surprise, so from that point of view we would expect there to be minimal impact on the increase or decrease of individual sentences. We agree that the provision of the additional guidance should reinforce current best practice, by bringing together guidance that (after all) already

exists, albeit in different documents. Providing easy access to the guidance materials for magistrates via the Sentencing Guidelines should, in our view, assist in improving consistency and transparency in sentencing between different benches of magistrates, and between different LJAs. *West London Bench*

I'm sure there will be some effect mostly on consistency of sentencing. The explanations may assist sentencers in coming to more speedy decisions by spending less time trying to interpret what is meant by certain factors. I don't foresee either an overall increase or decrease in average sentences as a result of these changes. *West Sussex Bench*

It would seem that Question 20, relating to medium culpability factors would be likely to have the most profound effect on sentencing. It may be that we see a move towards the middle of the sentencing range, rather than at the extremes as a result, perhaps with more of a shift away from the lowest category for the reasons described above. *Insolvency Service*

We believe that the detailed explanation to offence committed in custody will and should highlight the significance of offences committed within prison establishments. Magistrates may rarely see such offences. This guidance will provide sentencers with the justification to ensure that such offences are dealt with more severely than would otherwise be the case. This will assist in the proper maintenance of safety and control measures within prisons. *JCS*

We believe the proposed expanded factors will improve consistency, not just across different geographical areas but across similar level offences. The expansion should also improve the quality of sentencing by drawing attention to all aspects of the offence, and make it easier to refer to material more quickly. However, we do not believe the proposals will have a major impact on sentencing. *MA*

One would hope that the major effect will be a higher level of consistency in sentencing. *Law Society*

The proposed extension in relation to the offender being under the influence of drugs or alcohol is likely to have an effect on sentencing practices, because of a lack of understanding of substance use and the stigma associated with this. It is not sufficient to say "it has not been possible to estimate how sentencing severity might be affected by any change, given the limited data about how this factor is currently being applied". The changes we have proposed at A1 and M17, would reduce the risk and ensure greater consistency. However, a further impact assessment should be carried out following implementation. *Release*

It is envisaged that the clarification of the allocation of cases to Culpability B is likely to lead to more cases being sentenced within Culpability B. This may, of course, mean that some cases are sentenced less severely than they may have been and other more severely. It does not seem that any of the proposed changes are likely to result in a radically different approach to sentencing. *CBA*

3.12 The CLSA and the Council of HM Circuit Judges repeated their misgivings about the proposals, though for opposing reasons:

The CLSA are not able to speculate on whether the proposals will have an impact on sentencing in practise. There are consistently different sentences imposed for similar offences in different regions often taking into account established local concerns and

priorities. Different Judges and Judicial tribunals will have different views. Frankly, the more certain the guidelines, the greater transparency and consistency as opposed to blurring and attempting to tailor guidelines. Sentencing should be certain, not speculative. It is not the role of the CLSA or indeed any other organisation to try to establish what the proposed expanded factors would be. *CLSA*

We re-iterate the proposed changes will, in our view, add an extra layer to the sentencing process which, save for the exceptions we have identified above, is unnecessary and likely to be counter-productive. There is likely to be a sense on the part of many judges that these proposals are too prescriptive and at odds with a discipline that is an art rather than a science. We respectfully take the view that many of the proposed expanded explanations stray into academic areas concerning offending rather than the practicalities of how to sentence an offender. *Council of HM Circuit Judges*

3.13 A combined resource assessment will be published for the expanded explanations and the *General* guideline. Once the decisions from this meeting have been taken into account, the resource assessment will be circulated to members for comments prior to publication. The responses to consultation have not highlighted any previously unidentified areas of concern and so the assessment is likely to be largely unchanged since consultation, namely: while the changes are designed to reflect current best practice rather than alter sentencing practice, it remains difficult to estimate with any precision the impact the changes may have on prison and probation resources.

#### *Equality and Diversity*

3.14 The expanded explanations consultation set out ways in which the Council had sought to have regard to equality and diversity issues, specifically the effect of the proposals on victims and offenders with protected characteristics. A question was asked: Are there any other equality and diversity issues that the explanations should address?

3.15 Most respondents who answered this question did not raise any issues, others referred to points that they had made earlier in response to specific explanations. The PRT responded as follows:

As highlighted above, we believe that the following sections of the draft guidance will have disproportionate equality impacts in their current form and require revision:

- PSR guidance - Mental health; learning disability, women
- SA1 – Previous convictions - Mental health; learning disability; young adults, BAME
- A1 – Commission of the offence while under the influence of alcohol or drugs – Mental health; BAME
- A2. Offence was committed as part of a group – BAME; young adults
- A12. Offence committed in the presence of other(s) (especially children) - women
- A14. Blame wrongly placed on others – mental health; learning disability, autism
- A16. Offence committed on licence or post sentence supervision or while subject to court order(s) – mental health; learning disability; young adults; women
- M3. Remorse – learning disability, autism

The guideline should include clear links to the extensive information provided in the Equal Treatment Bench Book published by the Judicial College, which warrants much more vigorous dissemination including by the Sentencing Council <https://www.judiciary.uk/wp-content/uploads/2018/02/ETBB-February-2018-amended-March-2019.pdf>

3.16 The Council will have already considered providing a link to the Equal Treatment Bench Book as raised by the Race/Gender paper. The inclusion of such a link in all guidelines would reinforce much of the guidance in the expanded explanations.

**Question 23: Does the Council wish to include a link to the Equal Treatment Bench Book in all guidelines?**

*Other comments*

3.17 Respondents were invited to make any comments or suggestions that were not covered by other questions.

3.18 The West London Bench noted that the explanations are applicable to sentencing adults only and suggested that future consideration should be given to providing additional explanations and guidance on the aggravating and mitigating factors in the digital version of this Overarching Principles Guideline for Children and Young People. It is proposed to keep a note of this suggestion to be considered when that guidance is next looked at.

3.19 The PRT and CLSA raised the issue of training for judges and magistrates on the changes. Plans are already in place to develop training materials in conjunction with the Judicial College to ensure that sentencers and other guideline users are aware of the explanations, know how to access them and understand how to use them.

3.20 The Howard League also noted the need for training and raised concerns about how the expanded explanations will be made available to those without computer access. They state: 'It is essential that sentencing guidelines are transparent and accessible, especially for remand prisoners. The definitions must be made available in a format that will enable all people to access it regardless of their computer access and literacy.'

3.21 It will have been noted that the consultation responses raised a wide range of issues, some of which the Council may feel are worthy of further consideration in future. Additionally, once the expanded explanations have been published and are in use, it is likely that suggestions for changes or additions will be made by users. It is proposed that if the Council is considering changes to the explanations in future, consultation on those changes can be included in other consultations on new or revised guidelines. This will enable the Council to be responsive to the need for change and ensure that the explanations remain helpful and current.

### *Next steps*

3.22 If the *General* guideline and expanded explanations are signed off by the Council today the next steps will be as follows:

1. Any changes agreed will be made to the draft explanations. These will apply to the General guideline as well as to offence specific guidelines. These changes will be made on the test version of the Council's website – ready for transfer to the live site on launch.
2. The Communications team will put together a plan for the launch.
3. The resource assessment (covering both the General guideline and the expanded explanations) will be completed and circulated to members for comments.
4. The consultation response document (covering both the General guideline and the expanded explanations) will be written and circulated to members for comments.
5. Training materials will be developed in conjunction with the Judicial College who have already made provisional plans to utilise bench meetings to deliver the training in the autumn. We plan to make a short video showing how the expanded explanations are accessed and used.
6. The General guideline and expanded explanations will be published on the Council's website on 24 July to come into force on 1 October. The resource assessment and consultation response will also be published on 24 July.
7. The changes to medium culpability will be made and published on 24 July
8. The other changes to existing guidelines consulted on will be made at a later date (probably over the summer)

3.23 The publication of this project is a little different to most guidelines in that once the expanded explanations are published on the live site they will be available even though not in force. We intend to add a note to each explanation stating that it is not in force until 1 October and in addition the General guideline will show as a different colour until the in-force date.

3.24 Any of the changes to existing guidelines considered at 3.1 to 3.5 approved by the Council today, are separate from the expanded explanations and General guideline. Once these changes are made on the live site they will effectively be in force.

3.25 It is proposed that changes to medium culpability in the *Robbery, Fraud and Theft* guidelines are published on 24 July and that attention is drawn to the changes as part of the communications at the launch. The changes will also be shown on the log of changes published on the Council's website

3.26 The proposed changes to the wording/ presentation of maximum sentences and dangerousness are not substantive changes to guidelines, and making (and checking) the changes to all relevant guidelines may take some time and so it is proposed that these are published at a later date, alongside a news item on the website and communication to relevant stakeholders (e.g. magistrates, judiciary, prosecutors, probation etc) and shown in the log of changes.



**Question 24: Does the Council agree to the next steps as outlined above?**

Blank page

# General guideline

## For sentencing offences for which there is no offence specific sentencing guideline

The General guideline may also be referred to when sentencing any offence for which the explanations in this guideline may be relevant.

## Applicability of guideline

In accordance with section 120 of the Coroners and Justice Act 2009, the Sentencing Council issues this definitive guideline. It applies to all offenders aged 18 and older, who are sentenced on or after [date].

Section 125(1) of the Coroners and Justice Act 2009 provides that when sentencing offences committed on or after 6 April 2010:

“Every court –

- a. must, in sentencing an offender, follow any sentencing guideline which is relevant to the offender’s case, and
- b. must, in exercising any other function relating to the sentencing of offenders, follow any sentencing guidelines which are relevant to the exercise of the function,

unless the court is satisfied that it would be contrary to the interests of justice to do so.”

This guideline applies only to offenders aged 18 and older. General principles to be considered in the sentencing of youths are in the Sentencing Guidelines Council’s definitive guideline, [Sentencing children and young people - overarching principles](#).

**STEP ONE – reaching a provisional sentence**

- a) Where there is no definitive sentencing guideline for the offence, to arrive at a provisional sentence the court should take account of all of the following (if they apply):
- the statutory maximum sentence (and if appropriate minimum sentence) for the offence;
  - sentencing judgments of the Court of Appeal (Criminal Division) for the offence; and
  - definitive sentencing guidelines for analogous offences

The court will be assisted by the parties in identifying the above.

For the avoidance of doubt the court should **not** take account of any draft sentencing guidelines.

When considering definitive guidelines for analogous offences the court must apply these carefully, making adjustments for any differences in the statutory maximum sentence and in the elements of the offence. This will not be a merely arithmetical exercise.

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

The seriousness of the offence is assessed by considering:

- the **culpability** of the offender and
- the **harm** caused by the offending.

- c) The initial assessment of harm and culpability should take no account of plea or previous convictions.

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

More information:


**Culpability** is assessed with reference to the offender’s role, level of intention and/or premeditation and the extent and sophistication of planning.

- The court should balance these factors to reach a fair assessment of the offender’s overall culpability in all the circumstances of the case and the offender.

- The mere presence of a factor that is inherent in the offence should not be used in assessing culpability.
- Deliberate or gratuitous violence, or damage to property, over and above what is needed to carry out the offence will normally indicate a higher level of culpability
- For offences where there is no requirement for the offender to have any level of intention, recklessness, negligence, dishonesty, knowledge, understanding or foresight for the offence to be made out, the range of culpability **may** be inferred from the circumstances of the offence as follows:

Highest level  Lowest level	Deliberate - intentional act or omission
	Reckless - acted or failed to act regardless of the foreseeable risk
	Negligent - failed to take steps to guard against the act or omission
	Low/no culpability - act or omission with none of the above features

- For offences that require some level of culpability (eg intention, recklessness or knowledge) to be made out, the range of culpability will be narrower. Relevant factors **may** typically include but are not limited to:


Highest level  Lowest level	High level of planning/ sophistication/ leading role
	Some planning/ significant role
	Little or no planning/ minor role

- These models of assessing culpability will not be applicable to all offences

**Harm** – which the offence caused, was intended to cause or might foreseeably have caused.

- There may be primary and secondary victims of an offence and, depending on the offence, victims may include one or more individuals, a community, the general public, the state, the environment and/or animal(s). In some cases there may not be an identifiable victim.
- An assessment of harm should generally reflect the overall impact of the offence upon the victim(s) and may include direct harm (including physical injury, psychological harm and financial loss) and consequential harm.
- When considering the value of property lost or damaged the court should also take account of any sentimental value to the victim(s) and any disruption caused to a victim’s life, activities or business.
- When considering harm to animals or the environment relevant considerations will include the impact on rare or endangered species or sensitive locations, and any suffering caused.
- Where harm was intended but no harm or a lower level of harm resulted – the sentence will normally be assessed with reference to the level of harm intended.
- Where the harm caused is greater than that intended - the sentence will normally be assessed with reference to the level of harm suffered by the victim.
- Dealing with a risk of harm involves consideration of both the likelihood of harm occurring and the extent of it if it does.
- Risk of harm is less serious than the same actual harm. Where the offence has caused risk of harm but no (or less) actual harm the normal approach is to move down to the next category of harm. This may not be appropriate if either the likelihood or extent of potential harm is particularly high.

- A Victim Personal Statement (VPS) or other impact statement may assist the court in assessing harm, but the absence of a VPS or other impact statement should not be taken to indicate the absence of harm.
- The court should balance these characteristics to reach a fair assessment of harm in the context of the circumstances of the offence

Highest level  Lowest level	Very serious harm caused to individual victim(s) or to wider public/ environment etc
	Serious harm caused OR high risk of very serious harm
	Significant harm caused OR high risk of serious harm
	Low/ no harm caused OR high risk significant harm

The table should be used in conjunction with the notes above and may not be applicable to all offences.

## STEP TWO

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

- Identify whether a combination of these or other relevant factors should result in any upward or downward adjustment from the sentence arrived at so far.
- It is for the sentencing court to determine how much weight should be assigned to the aggravating and mitigating factors taking into account all of the circumstances of the offence and the offender. Not all factors that apply will necessarily influence the sentence.
- When sentencing an offence for which a **fixed penalty notice [link to information below]** was available the reason why the offender did not take advantage of the fixed penalty will be a relevant consideration.
- **If considering a community or custodial sentence refer also to the *Imposition of community and custodial sentences* definitive guideline. [link to information below]**
- **If considering a fine – see information on fine bands [link to information below]**

---

**Penalty notices** may be issued as an alternative to prosecution in respect of a range of offences. An admission of guilt is not a prerequisite to issuing a penalty notice. An offender who is issued with a penalty notice may nevertheless be prosecuted for the offence if he or she:

- asks to be tried for the offence; or
- fails to pay the penalty within the period stipulated in the notice and the prosecutor decides to proceed with charges.

In some cases of non-payment, the penalty is automatically registered and enforceable as a fine without need for recourse to the courts. This procedure applies to penalty notices for disorder and fixed penalty notices issued in respect of certain road traffic offences but not to fixed penalty notices issued for most other criminal offences

When sentencing in cases in which a penalty notice was available:

- the fact that the offender did not take advantage of the penalty (whether that was by requesting a hearing or failing to pay within the specified timeframe) does not increase the seriousness of the offence and must not be regarded as an aggravating factor. The appropriate sentence must be determined in accordance with the sentencing principles set out in this guideline (including the amount of any fine, which must take an offender's financial circumstances into account), disregarding the availability of the penalty. In some cases this may result in a fine that is lower than the fixed penalty.
- where a penalty notice could not be offered or taken up for reasons unconnected with the offence itself, such as administrative difficulties outside the control of the offender, the starting point should be a fine equivalent to the amount of the penalty and no order of costs should be imposed. The offender should not be disadvantaged by the unavailability of the penalty notice in these circumstances.

Where an offender has had previous penalty notice(s), the fact that an offender has previously been issued with a penalty notice does not increase the seriousness of the current offence and must not be regarded as an aggravating factor. It may, however, properly influence the court's assessment of the offender's suitability for a particular sentence, so long as it remains within the limits established by the seriousness of the current offence.

**[The information on fines, community orders and custodial sentences, aggravating and mitigating factors will be the same as for the expanded explanations set out in Annex A to paper 1]**

### **STEP THREE**

#### **Consider any factors which indicate a reduction for assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

### **STEP FOUR**

#### **Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

### **STEP FIVE**

#### **Dangerousness**

#### **Where the offence is listed in Schedule 15 and/or Schedule 15B of the Criminal Justice Act 2003**

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to impose a life sentence (section 224A or section 225) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

**STEP SIX**

**Special custodial sentence for certain offenders of particular concern (section 236A)**

Where the offence is listed in Schedule 18A of the Criminal Justice Act 2003 and the court does not impose a sentence of imprisonment for life or an extended sentence, but does impose a period of imprisonment, the term of the sentence must be equal to the aggregate of the appropriate custodial term and a further period of one year for which the offender is to be subject to a licence.

See the Crown Court Compendium, Part II Sentencing S4-3 [\[link\]](#) for further details

**STEP SEVEN**

**Totality principle**

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

**STEP EIGHT**

**Compensation and ancillary orders**

In all cases the court should consider whether to make compensation and/or other ancillary orders. The court will be assisted by the parties in identifying relevant ancillary orders.

Where the offence involves a firearm, an imitation firearm or an offensive weapon the court may consider the criteria in section 19 of the Serious Crime Act 2007 for the imposition of a Serious Crime Prevention Order.

**STEP NINE**

**Reasons**

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

**STEP TEN**

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

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