

## Individuals: Trade mark, unauthorised use of etc.

Trade Marks Act 1994, s.92

Triable either way

Maximum: 10 years' custody

Offence range: Discharge - 6 years' custody

Use this guideline when the offender is an individual. If the offender is an organisation, please refer to the **Organisations: Trade mark, unauthorised use of etc.** guideline.

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### Step 1- Determining the offence category

The court should determine the offence category with reference to culpability and harm.

#### Culpability

The level of culpability is determined by weighing up all the factors of the case to determine the offender's **role** and the extent to which the offending was **planned** and the **sophistication** with which it was carried out.

##### A – High culpability

- Sophisticated nature of offence/significant planning
- A leading role where offending is part of a group activity
- Involvement of others through coercion, intimidation or exploitation

##### B – Medium culpability

- Some degree of organisation/planning involved
- A significant role where offending is part of a group activity
- 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

##### C – Lesser culpability

- Little or no organisation/planning
- Performed limited function under direction
- Involved through coercion, intimidation or exploitation
- Limited awareness or understanding of the offence

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

#### Harm

The assessment of harm for this offence involves putting a monetary figure on the offending with reference to the **retail value of equivalent genuine goods** and assessing **any significant additional harm** suffered by the trade mark owner or purchasers/ end users of the counterfeit goods:

1. Where there is evidence of the volume of counterfeit goods sold or possessed, the monetary value should be assessed by taking the **equivalent retail value of legitimate versions** of the counterfeit goods involved in the offending (where this cannot be accurately assessed an estimated equivalent retail value should be assigned);

2. Where there is no evidence of the volume of counterfeit goods sold or possessed:
- In the case of labels or packaging, harm should be assessed by taking the **equivalent retail value of legitimate goods** to which the labels or packaging could reasonably be applied, taking an average price of the relevant products.
  - In the case of equipment or articles for the making of copies of trade marks, the court will have to make an assessment of the scale of the operation and assign an equivalent value from the table below.

Note: the equivalent retail value is likely to be considerably higher than the actual value of the counterfeit items and this is accounted for in the sentence levels, however, in **exceptional** cases where the equivalent retail value is grossly disproportionate to the actual value, an adjustment **may** be made.

The general harm caused to purchasers/ end users (by being provided with counterfeit goods), to legitimate businesses (through loss of business) and to the owners of the trade mark (through loss of revenue and reputational damage) is reflected in the sentence levels at step 2.

Examples of **significant additional harm** may include but are not limited to:

- Substantial damage to the legitimate business of the trade mark owner (taking into account the size of the business)
- Purchasers/ end users put at risk of significant physical harm from counterfeit goods

	<b>Equivalent retail value of legitimate goods</b>	Starting point based on
<b>Category 1</b>	£1million or more <b>or</b> category 2 value with significant additional harm	£2 million
<b>Category 2</b>	£300,000 – £1million <b>or</b> category 3 value with significant additional harm	£600,000
<b>Category 3</b>	£50,000 – £300,000 <b>or</b> category 4 value with significant additional harm	£125,000
<b>Category 4</b>	£5,000 – £50,000 <b>or</b> category 5 value with significant additional harm	£30,000
<b>Category 5</b>	Less than £5,000 <b>and</b> little or no significant additional harm	£2,500

## Step 2 – Starting point and category range

Having determined the category at step 1, the court should use the appropriate starting point to reach a sentence within the category range in the table below. The starting point applies to all offenders irrespective of plea or previous convictions.

Where the value is larger or smaller than the amount on which the starting point is based, this should lead to upward or downward adjustment as appropriate.

<b>Harm</b>	<b>Culpability</b>		
	<b>A</b>	<b>B</b>	<b>C</b>
<b>Category 1</b> £1 million or more	<b>Starting point</b> 5 years' custody	<b>Starting point</b> 3 years' custody	<b>Starting point</b> 2 years' custody
Starting point based on £2 million	<b>Category range</b> 3 – 6 years' custody	<b>Category range</b> 2 – 5 years' custody	<b>Category range</b> 1 – 3 years' custody

<b>Category 2</b> £300,000 – £1million  Starting point based on £600,000	<b>Starting point</b> 4 years' custody <b>Category range</b> 2 – 5 years' custody	<b>Starting point</b> 2 years' custody <b>Category range</b> 1 – 3 years' custody	<b>Starting point</b> 1 year's custody <b>Category range</b> 26 weeks' – 2 years' custody
<b>Category 3</b> £50,000 - £300,000  Starting point based on £125,000	<b>Starting point</b> 2 years' custody  <b>Category range</b> 1 – 3 years' custody	<b>Starting point</b> 1 year's custody  <b>Category range</b> 26 weeks' – 2 years' custody	<b>Starting point</b> High level community order <b>Category range</b> Low level community order – 26 weeks' custody
<b>Category 4</b> £5,000- £50,000  Starting point based on £30,000	<b>Starting point</b> 1 year's custody  <b>Category range</b> 26 weeks' – 2 years custody	<b>Starting point</b> High level community order <b>Category range</b> Low level community order – 26 weeks' custody	<b>Starting point</b> Band C fine  <b>Category range</b> Band B fine – Medium level community order
<b>Category 5</b> Less than £5,000  Starting point based on £2,500	<b>Starting point</b> High level community order <b>Category range</b> Low level community order – 26 weeks' custody	<b>Starting point</b> Band C fine  <b>Category range</b> Band B fine – Medium level community order	<b>Starting point</b> Band B fine  <b>Category range</b> Discharge – Band C fine

This is an offence where it may be appropriate to combine a community order with a fine

The court should then consider further adjustment for any aggravating or mitigating factors. The following list is a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point.

## Factors increasing seriousness

### Statutory aggravating factors

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- Offence committed whilst on bail

### Other aggravating factors

1. Purchasers or others put at risk of some harm from counterfeit items (where not taken into account at step 1)
2. Attempts to conceal/dispose of evidence
3. Attempts to conceal identity
4. Failure to respond to warnings about behaviour
5. Offences taken into consideration
6. Blame wrongly placed on others
7. Failure to comply with current court orders
8. Offence committed on licence or post sentence supervision

### **Factors reducing seriousness or reflecting personal mitigation**

1. No previous convictions **or** no relevant/recent convictions
2. Remorse
3. Good character and/or exemplary conduct
4. Offender co-operated with investigation, made early admissions and/or voluntarily reported offending
5. Lapse of time since apprehension where this does not arise from the conduct of the offender
6. Serious medical condition requiring urgent, intensive or long-term treatment
7. Age and/or lack of maturity
8. Mental disorder or learning disability
9. Sole or primary carer for dependent relatives

### **Step 3 – Consider any factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account [section 74 of the Sentencing Code](#) (reduction in sentence for assistance to prosecution) 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 4 – Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with [section 73 of the Sentencing Code](#) and the [Reduction in Sentence for a Guilty Plea](#) guideline.

### **Step 5 – 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 [Totality](#) guideline.

### **Step 6 – Confiscation, compensation and ancillary orders**

The court must proceed with a view to making a **confiscation order** if it is asked to do so by the prosecutor or if the court believes it is appropriate for it to do so.

Where the offence has resulted in loss or damage the court must consider whether to make a **compensation order**.

If the court makes both a confiscation order and an order for compensation and the court believes the offender will not have sufficient means to satisfy both orders in full, the court must direct that the compensation be paid out of sums recovered under the confiscation order (section 13 of the Proceeds of Crime Act 2002).

### **Forfeiture – s.97 Trade Marks Act 1994**

On the application for forfeiture by a person who has come into possession of goods, materials or articles in connection with the investigation or prosecution of the offence, the court shall make an order for the forfeiture of any goods, material or articles only if it is satisfied that a relevant offence has been committed in relation to the goods, material or articles. A court may infer that such an offence has been committed in relation to any goods, material or articles if it is satisfied that such an offence has been committed in relation to goods, material or articles which are representative of them (whether by reason of being of the same design or part of the same consignment or batch or otherwise).

The court may also consider whether to make other ancillary orders. These may include a **deprivation order** and **disqualification from acting as a company director**.

- [Ancillary orders – Magistrates' Court](#)
- [Ancillary orders – Crown Court Compendium, Part II Sentencing](#)

## **Step 7 – Reasons**

[Section 52 of the Sentencing Code](#) imposes a duty to give reasons for, and explain the effect of, the sentence.

## **Step 8 – 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 and [section 325 of the Sentencing Code](#).

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## **Common assault / Racially or religiously aggravated Common Assault**

Crime and Disorder Act 1998, s.29, Criminal Justice Act 1988, s.39

**Effective from: 1 July 2021**

**Common Assault**, Criminal Justice Act 1988 (section 39)

**Racially/religiously aggravated common assault**, Crime and Disorder Act 1998 (section 29)

### **Section 39**

Triable only summarily

Maximum: 6 months' custody

### **Section 29**

Triable either way

Maximum: 2 years' custody

Offence range: Discharge – 26 weeks' custody

Racially or religiously aggravated common assault is a specified offence for the purposes of sections [266](#) and [279](#) (extended sentence for certain violent, sexual or terrorism offences) of the Sentencing Code.

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Guideline users should be aware that the [Equal Treatment Bench Book](#) covers important aspects of fair treatment and disparity of outcomes for different groups in the criminal justice system. It provides guidance which sentencers are encouraged to take into account wherever applicable, to ensure that there is fairness for all involved in court proceedings.

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

**Culpability** demonstrated by one or more of the following:

The level of culpability is determined by weighing up all the factors of the case. **Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.**

**A - High culpability:**

- Intention to cause fear of serious harm, including disease transmission
- ~~Targeting of vulnerable victim, where victim vulnerable by personal characteristics or circumstances~~
- Victim obviously vulnerable due to age, personal characteristics or circumstances
- Prolonged/persistent assault
- Use of substantial force
- Strangulation/Suffocation/Asphyxiation
- Threatened or actual use of weapon or weapon equivalent\*
- Leading role in group activity

**B – Lesser culpability**

- Lesser role in group activity
- Mental disorder or learning disability, where linked to the commission of the offence
- Excessive self defence
- All other cases not captured by category A factors

\*Examples of a weapon equivalent can include but are not limited to: a shod foot, use of acid, use of animal in commission of offence.

**Harm**

The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused to the victim. **In assessing the level of harm, consideration should be given to:**

- the number of injuries
- severity of injury and pain suffered and
- the duration or longevity of any psychological harm or distress caused.

<b>Category 1</b>	More than minor physical or psychological harm/distress
<b>Category 2</b>	Minor physical or psychological harm/distress
<b>Category 3</b>	No/very low level of physical harm and/or distress



## STEP TWO

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

HARM	CULPABILITY	
	A	B
Harm 1	<p><b>Starting point</b> High level community order</p> <p><b>Category Range</b> Low level community order - 26 weeks' custody</p>	<p><b>Starting point</b> Medium level community order</p> <p><b>Category Range</b> Low level community order - 16 weeks' custody</p>
Harm 2	<p><b>Starting point</b> Medium level community order</p> <p><b>Category Range</b> Low level community order - 16 weeks' custody</p>	<p><b>Starting point</b> Band B fine Low level community order</p> <p><b>Category Range</b> Band C Fine – High level community order</p>
Harm 3	<p><b>Starting point</b> Band B fine Low level community order</p> <p><b>Category Range</b> Band C Fine - High level community order</p>	<p><b>Starting point</b> Band A Fine Band C Fine</p> <p><b>Category Range</b> Discharge – Low level community order</p>

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

### Factors increasing seriousness

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

Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction

Offence committed whilst on bail

Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: disability, sexual orientation or transgender identity

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

Spitting or coughing

Offence committed against those working in the public sector or providing a service to the public or against person coming to the assistance of emergency worker

Offence committed in prison

Offence committed in domestic context

Presence of children

Gratuitous degradation of victim

Abuse of power and/or position of trust

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Commission of offence whilst under the influence of alcohol/drugs

Offence committed whilst on licence or subject to post sentence supervision

Failure to comply with current court orders

### Factors reducing seriousness or reflecting personal mitigation

No previous convictions or no relevant/recent convictions

Remorse

Good character and/or exemplary conduct

Significant degree of provocation

Age and/or lack of maturity

Mental disorder or learning disability, where not linked to the commission of the offence

Sole or primary carer for dependent relative(s)

Determination and/or demonstration of steps taken to address addiction or offending behaviour

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

<b>RACIALLY OR RELIGIOUSLY AGGRAVATED OFFENCES ONLY</b>
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Having determined the category of the basic offence to identify the sentence of a non-aggravated offence, the court should now consider the level of racial or religious aggravation involved and apply an appropriate uplift to the sentence in accordance with the guidance below. The following is a list of factors which the court should consider to determine the level of aggravation. Where there are characteristics present which fall under different levels of aggravation, the court should balance these to reach a fair assessment of the level of aggravation present in the offence.

**Maximum sentence for the aggravated offence on indictment is 2 years' custody (maximum when tried summarily is 6 months' custody)**

<b>Care should be taken to avoid double counting factors already taken into account in assessing the level of harm at step one</b>
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<b>HIGH LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION</b>	<b>SENTENCE UPLIFT</b>
<ul style="list-style-type: none"> <li>▪ Racial or religious aggravation was the predominant motivation for the offence.</li> <li>▪ Offender was a member of, or was associated with, a group promoting hostility based on race or religion.</li> <li>▪ Aggravated nature of the offence caused severe distress to the victim or the victim's family (<b>over and above the distress already considered at step one</b>).</li> <li>▪ Aggravated nature of the offence caused serious fear and distress throughout local community or more widely.</li> </ul>	<p>Increase the length of custodial sentence if already considered for the basic offence <b>or</b> consider a custodial sentence, if not already considered for the basic offence.</p>
<b>MEDIUM LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION</b>	<b>SENTENCE UPLIFT</b>
<ul style="list-style-type: none"> <li>▪ Racial or religious aggravation formed a significant proportion of the offence as a whole.</li> <li>▪ Aggravated nature of the offence caused some distress to the</li> </ul>	<p>Consider a significantly more onerous penalty of the same type <u>or consider</u> a more severe type of sentence than for the basic offence.</p>

<p>victim or the victim's family <b>(over and above the distress already considered at step one)</b>.</p> <ul style="list-style-type: none"> <li>▪ Aggravated nature of the offence caused some fear and distress throughout local community or more widely.</li> </ul>	
<p><b>LOW LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION</b></p>	<p><b>SENTENCE UPLIFT</b></p>
<ul style="list-style-type: none"> <li>▪ Aggravated element formed a minimal part of the offence as a whole.</li> <li>▪ Aggravated nature of the offence caused minimal or no distress to the victim or the victim's family <b>(over and above the distress already considered at step one)</b>.</li> </ul>	<p>Consider a more onerous penalty of the same type identified for the basic offence.</p>

Magistrates may find that, although the appropriate sentence for the basic offence would be within their powers, the appropriate increase for the aggravated offence would result in a sentence in excess of their powers. If so, they must commit for sentence to the Crown Court. **The sentencer should state in open court that the offence was aggravated by reason of race or religion, and should also state what the sentence would have been without that element of aggravation.**

**Step 3 – Consider any other factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account [section 74 of the Sentencing Code](#) (reduction in sentence for assistance to prosecution) 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 4 – Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with [section 73 of the Sentencing Code](#) and the [Reduction in Sentence for a Guilty Plea](#) guideline.

**Step 5 – Dangerousness**

Racially or religiously aggravated common assault is a specified offence. The court should consider whether having regard to the criteria contained in [Chapter 6 of Part 10 of the Sentencing Code](#) it would be appropriate to impose an extended sentence (sections [266](#) and [279](#)).

**Step 6 – 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 offending behaviour. See [Totality](#) guideline.

**Step 7 – Compensation and ancillary orders**

In all cases, the court should consider whether to make [compensation](#) and/or other ancillary orders.

- [Ancillary orders – Magistrates' Court](#)
- [Ancillary orders – Crown Court Compendium](#)

**Step 8 – Reasons**

[Section 52 of the Sentencing Code](#) imposes a duty to give reasons for, and explain the effect of, the sentence.

**Step 9 – 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 and [section 325 of the Sentencing Code](#).

**ASSAULT ON EMERGENCY WORKER****STEP ONE****Determining the offence category**

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

The level of culpability is determined by weighing up all the factors of the case. **Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.**

<b>Culpability demonstrated by one or more of the following:</b>	
<b>A - High culpability:</b>	
<ul style="list-style-type: none"> <li>• Intention to cause fear of serious harm, including disease transmission</li> <li>• Prolonged/persistent assault</li> <li>• Use of substantial force</li> <li>• Threatened or actual use of weapon or weapon equivalent*</li> <li>• Strangulation/Suffocation/Asphyxiation</li> <li>• Leading role in group activity</li> </ul>	
<b>B – Lesser culpability</b>	
<ul style="list-style-type: none"> <li>• Lesser role in group activity</li> <li>• Mental disorder or learning disability, where linked to the commission of the offence</li> <li>• All other cases not captured by category 1 factors</li> </ul>	
*Examples of a weapon equivalent can include but are not limited to: a shod foot, use of acid, use of animal in commission of offence.	

<b>Harm</b>	
The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused to the victim.	
<b>Category 1</b>	More than minor physical or psychological harm/distress
<b>Category 2</b>	Minor physical or psychological harm/distress
<b>Category 3</b>	No/very low level of physical harm and/or distress

**STEP TWO**

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

<b>HARM</b>	<b>CULPABILITY</b>	
	<b>A</b>	<b>B</b>
<b>Harm 1</b>	<p><b>Starting point</b> 8 months</p> <p><b>Category Range</b> 26 weeks' – 1 years' custody</p>	<p><b>Starting point</b> 16 weeks</p> <p><b>Category Range</b> High level Community Order - 26 weeks' custody</p>
<b>Harm 2</b>	<p><b>Starting point</b> 16 weeks</p> <p><b>Category Range</b> High level Community Order - 26 weeks' custody</p>	<p><b>Starting point</b> HL CO</p> <p><b>Category Range</b> Low Level Community Order – 16 weeks</p>
<b>Harm 3</b>	<p><b>Starting point</b> HL CO</p> <p><b>Category Range</b> Low Level Community Order – 16 weeks</p>	<p><b>Starting point</b> ML CO</p> <p><b>Category Range</b> Band B Fine – HL CO</p>

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

**Factors increasing seriousness****Statutory aggravating factors:**

Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction

Offence committed whilst on bail

Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: race, religion, disability, sexual orientation or transgender identity

**Other aggravating factors:**

Spitting or coughing

Victim isolated and/or had no opportunity to escape situation

Presence of children

Gratuitous degradation of victim

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Commission of offence whilst under the influence of alcohol/drugs

Offence committed whilst on licence or subject to post sentence supervision

Failure to comply with current court orders

**Factors reducing seriousness or reflecting personal mitigation**

No previous convictions or no relevant/recent convictions

Remorse

Good character and/or exemplary conduct

Age and/or lack of maturity

Mental disorder or learning disability, where not linked to the commission of the offence

Sole or primary carer for dependent relative(s)

Determination and/or demonstration of steps taken to address addiction or offending behaviour

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



## Assault with intent to resist arrest

Offences against the Person Act 1861, s.38

**Effective from:**

**Triable either way**

**Maximum: 2 years' custody**

Offence Range: Fine –1 year 3 months' custody

This is a specified offence for the purposes of sections [266](#) and [279](#) (extended sentence for certain violent, sexual or terrorism offences) of the Sentencing Code.

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Guideline users should be aware that the [Equal Treatment Bench Book](#) covers important aspects of fair treatment and disparity of outcomes for different groups in the criminal justice system. It provides guidance which sentencers are encouraged to take into account wherever applicable, to ensure that there is fairness for all involved in court proceedings.

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

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

**Culpability** demonstrated by one or more of the following:  
 The level of culpability is determined by weighing up all the factors of the case. **Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.**

**A - High culpability:**

- Intention to cause fear of serious harm, including disease transmission
- Prolonged/persistent assault
- Use of substantial force
- Threatened or actual use of weapon or weapon equivalent\*
- Strangulation/Suffocation/Asphyxiation
- Leading role in group activity

**B – Lesser culpability**

- Lesser role in group activity
- Mental disorder or learning disability, where linked to the commission of the offence
- All other cases not captured by category A factors

\*Examples of a weapon equivalent can include but are not limited to: a shod foot, use of acid, use of animal in commission of offence.

**Harm**

The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused to the victim. **In assessing the level of harm, consideration should be given to:**

- the number of injuries
- severity of injury and pain suffered and

**the duration or longevity of any psychological harm or distress caused.**

<b>Category 1</b>	More than minor physical or psychological harm/distress
<b>Category 2</b>	Minor physical or psychological harm/distress
<b>Category 3</b>	No/very low level of physical harm and/or distress

## STEP TWO

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

**Sentencers should be aware that there is evidence of a disparity in sentence outcomes for this offence which indicates that a higher proportion of Black and Mixed ethnicity offenders receive an immediate custodial sentence than White, Asian and Chinese or Other ethnicity offenders. There may be many reasons for these differences, but in order to apply the guidelines fairly sentencers may find useful information and guidance at Chapter 8 paragraphs 123 to 129 of the [Equal Treatment Bench Book](#).**

HARM	CULPABILITY	
	A	B
Harm 1	<p><b>Starting point</b> 36 weeks' custody</p> <p><b>Category Range</b> 26 weeks' custody – 1 year 3 months' custody</p>	<p><b>Starting point</b> 26 weeks' custody</p> <p><b>Category Range</b> High level community order - 36 weeks' custody</p>
Harm 2	<p><b>Starting point</b> 26 weeks' custody</p> <p><b>Category Range</b> High level community order - 36 weeks' custody</p>	<p><b>Starting point</b> High level community order</p> <p><b>Category Range</b> Low level community order – 26 weeks' custody</p>
Harm 3	<p><b>Starting point</b> High level community order</p> <p><b>Category Range</b> Low level community order – 26 weeks' custody</p>	<p><b>Starting point</b> Medium level community order</p> <p><b>Category Range</b> Band B Fine – High level community order</p>

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

### Factors increasing seriousness

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

Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction

Offence committed whilst on bail

Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: race, religion, disability, sexual orientation or transgender identity

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

Spitting or coughing

Victim isolated and/or had no opportunity to escape situation

Presence of children

Gratuitous degradation of victim

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Commission of offence whilst under the influence of alcohol/drugs

Offence committed whilst on licence or subject to post sentence supervision

Failure to comply with current court orders

### Factors reducing seriousness or reflecting personal mitigation

No previous convictions or no relevant/recent convictions

Remorse

Good character and/or exemplary conduct

Age and/or lack of maturity

Mental disorder or learning disability, where not linked to the commission of the offence

Sole or primary carer for dependent relative(s)

Determination and/or demonstration of steps taken to address addiction or offending behaviour

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

### **Step 3 – Consider any other factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account [section 74 of the Sentencing Code](#) (reduction in sentence for assistance to prosecution) 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 4 – Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with [section 73 of the Sentencing Code](#) and the [Reduction in Sentence for a Guilty Plea](#) guideline.

### **Step 5 – Dangerousness**

The court should consider whether having regard to the criteria contained in [Chapter 6 of Part 10 of the Sentencing Code](#) it would be appropriate to impose an extended sentence (sections [266](#) and [279](#)).

### **Step 6 – 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 offending behaviour. See [Totality](#) guideline.

### **Step 7 – Compensation and ancillary orders**

In all cases, the court should consider whether to make [compensation](#) and/or other ancillary orders.

- [Ancillary orders – Magistrates' Court](#)
- [Ancillary orders – Crown Court Compendium](#)

### **Step 8 – Reasons**

[Section 52 of the Sentencing Code](#) imposes a duty to give reasons for, and explain the effect of, the sentence.

### **Step 9 – 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 and [section 325 of the Sentencing Code](#).

## **Assault occasioning actual bodily harm / Racially or religiously aggravated ABH**

Crime and Disorder Act 1998, s.29, Offences against the Person Act 1861, s.47

**Effective from: 1 July 2021**

**Assault occasioning actual bodily harm**, Offences against the Person Act 1861 (section 47)

**Racially or religiously aggravated ABH**, Crime and Disorder Act 1998 (section 29)

**Triable either way**

Section 47 Maximum: 5 years' custody

Section 29 Maximum: 7 years' custody

**Offence range: Fine – 4 years' custody**

These are specified offences for the purposes of sections [266](#) and [279](#) (extended sentence for certain violent, sexual or terrorism offences) of the Sentencing Code.

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Guideline users should be aware that the [Equal Treatment Bench Book](#) covers important aspects of fair treatment and disparity of outcomes for different groups in the criminal justice system. It provides guidance which sentencers are encouraged to take into account wherever applicable, to ensure that there is fairness for all involved in court proceedings.

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

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

**Culpability** demonstrated by one or more of the following:

The level of culpability is determined by weighing up all the factors of the case. **Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics giving appropriate weight to relevant factors to reach a fair assessment of the offender's culpability.**

**A - High culpability**

- Significant degree of planning or premeditation
- Victim obviously vulnerable due to age, personal characteristics or circumstances
- Use of a highly dangerous weapon or weapon equivalent\*
- Strangulation/Suffocation/Asphyxiation
- Leading role in group activity
- Prolonged/persistent assault

**B – Medium culpability**

- Use of a weapon or weapon equivalent which does not fall within category A
- Lesser role in group activity
- Cases falling between category A or C because:
  - Factors in both high and lesser categories are present which balance each other out; and/or
  - The offender's culpability falls between the factors as described in high and lesser culpability

**C – Lesser culpability**

- No weapon used
- Excessive self defence
- Impulsive/spontaneous and short-lived assault
- Mental disorder or learning disability, where linked to the commission of the offence

\* A highly dangerous weapon **can include** weapons such as knives and firearms. **Highly dangerous** weapon equivalents can include corrosive substances (such as acid), whose dangerous nature must be substantially above and beyond the legislative definition of an offensive weapon which is; '*any article made or adapted for use for causing injury, or is intended by the person having it with him for such use*'. The court must determine whether the weapon or weapon equivalent is highly dangerous on the facts and circumstances of the case.

<b>Harm</b>	
<p>To assess the level of harm caused by the offence, the court must consider;</p> <ul style="list-style-type: none"> <li>• The range of injuries (including physical and psychological injury) that can occur in cases of assault occasioning actual bodily harm</li> <li>• Where in <b>that range</b> of injuries the injury caused falls</li> </ul>	
<b>Category 1</b>	<p>High level of physical or psychological harm</p> <p>Serious physical injury or serious psychological harm and/or substantial impact upon victim</p>
<b>Category 2</b>	<p>Medium level of physical or psychological harm</p> <p>Harm falling between categories 1 and 3</p>
<b>Category 3</b>	<p>Low level of physical or psychological harm</p> <p>Some level of physical injury or psychological harm with limited impact upon victim</p>



**STEP TWO**

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

**Sentencers should be aware that there is evidence of a disparity in sentence outcomes for this offence which indicates that a higher proportion of Black and Mixed ethnicity offenders receive an immediate custodial sentence than White, Asian and Chinese or Other ethnicity offenders. There may be many reasons for these differences, but in order to apply the guidelines fairly sentencers may find useful information and guidance at Chapter 8 paragraphs 123 to 129 of the [Equal Treatment Bench Book](#).**

HARM	CULPABILITY		
	A	B	C
<b>Harm 1</b>	<p><b>Starting point</b></p> <p>2 years 6 months' custody</p> <p><b>Category Range</b> 1 year 6 months' – 4 years' custody</p>	<p><b>Starting point</b></p> <p>1 year 6 months' custody</p> <p><b>Category Range</b> 36 weeks' – 2 years 6 months' custody</p>	<p><b>Starting point</b></p> <p>36 weeks' custody</p> <p><b>Category Range</b> High level community order - 1 year 6 months' custody</p>
<b>Harm 2</b>	<p><b>Starting point</b></p> <p>1 year 6 months' custody</p> <p><b>Category Range</b> 36 weeks' – 2 years 6 months' custody</p>	<p><b>Starting point</b></p> <p>36 weeks' custody</p> <p><b>Category Range</b> High level community order - 1 year 6 months' custody</p>	<p><b>Starting point</b> High level community order</p> <p><b>Category Range</b> Low level community order – 36 weeks' custody</p>
<b>Harm 3</b>	<p><b>Starting point</b></p> <p>36 weeks' custody</p> <p><b>Category Range</b> High level community order - 1 year 6 months' custody</p>	<p><b>Starting point</b> High level community order</p> <p><b>Category Range</b> Low level community order – 36 weeks' custody</p>	<p><b>Starting point</b> Medium level community order</p> <p><b>Category Range</b> Band B Fine – 26 weeks' custody</p>

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

### Factors increasing seriousness

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

Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction

Offence committed whilst on bail

Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: disability, sexual orientation or transgender identity

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

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

Spitting or coughing

Offence committed against those working in the public sector or providing a service to the public or against person coming to the assistance of emergency worker

Offence committed in prison (where not taken into account as a statutory aggravating factor)

Offence committed in domestic context

History of violence or abuse towards victim by offender

Presence of children

Gratuitous degradation of victim

Abuse of power and/or position of trust

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Commission of offence whilst under the influence of alcohol/drugs

Offence committed whilst on licence or subject to post sentence supervision

Failure to comply with current court orders

**Factors reducing seriousness or reflecting personal mitigation**

No previous convictions or no relevant/recent convictions

Remorse

Good character and/or exemplary conduct

Significant degree of provocation

History of significant violence or abuse towards the offender by the victim

Age and/or lack of maturity

Mental disorder or learning disability, where not linked to the commission of the offence

Sole or primary carer for dependent relative(s)

Determination and/or demonstration of steps taken to address addiction or offending behaviour

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

<b>RACIALLY OR RELIGIOUSLY AGGRAVATED OFFENCES ONLY</b>
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Having determined the category of the basic offence to identify the sentence of a non-aggravated offence, the court should now consider the level of racial or religious aggravation involved and apply an appropriate uplift to the sentence in accordance with the guidance below. The following is a list of factors which the court should consider to determine the level of aggravation. Where there are characteristics present which fall under different levels of aggravation, the court should balance these to reach a fair assessment of the level of aggravation present in the offence.

**Maximum sentence for the aggravated offence on indictment is 7 years' custody (maximum when tried summarily is 6 months' custody)**

<b>Care should be taken to avoid double counting factors already taken into account in assessing the level of harm at step one</b>
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HIGH LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION	SENTENCE UPLIFT
<ul style="list-style-type: none"> <li>▪ Racial or religious aggravation was the predominant motivation for the offence.</li> <li>▪ Offender was a member of, or was associated with, a group promoting hostility based on race or religion.</li> <li>▪ Aggravated nature of the offence caused severe distress to the victim or the victim's family <b>(over and above the distress already considered at step one)</b>.</li> <li>▪ Aggravated nature of the offence caused serious fear and distress throughout local community or more widely.</li> </ul>	<p>Increase the length of custodial sentence if already considered for the basic offence <b>or</b> consider a custodial sentence, if not already considered for the basic offence.</p>
MEDIUM LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION	SENTENCE UPLIFT
<ul style="list-style-type: none"> <li>▪ Racial or religious aggravation formed a significant proportion of the offence as a whole.</li> <li>▪ Aggravated nature of the offence caused some distress to the</li> </ul>	<p>Consider a significantly more onerous penalty of the same type <u>or consider</u> a more severe type of sentence than for the basic offence.</p>

<p>victim or the victim's family <b>(over and above the distress already considered at step one)</b>.</p> <ul style="list-style-type: none"> <li>▪ Aggravated nature of the offence caused some fear and distress throughout local community or more widely.</li> </ul>	
<p><b>LOW LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION</b></p>	<p><b>SENTENCE UPLIFT</b></p>
<ul style="list-style-type: none"> <li>▪ Aggravated element formed a minimal part of the offence as a whole.</li> <li>▪ Aggravated nature of the offence caused minimal or no distress to the victim or the victim's family <b>(over and above the distress already considered at step one)</b>.</li> </ul>	<p>Consider a more onerous penalty of the same type identified for the basic offence.</p>

Magistrates may find that, although the appropriate sentence for the basic offence would be within their powers, the appropriate increase for the aggravated offence would result in a sentence in excess of their powers. If so, they must commit for sentence to the Crown Court. **The sentencer should state in open court that the offence was aggravated by reason of race or religion, and should also state what the sentence would have been without that element of aggravation.**

### **Step 3 – Consider any other factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account [section 74 of the Sentencing Code](#) (reduction in sentence for assistance to prosecution) 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 4 – Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with [section 73 of the Sentencing Code](#) and the [Reduction in Sentence for a Guilty Plea](#) guideline.

### **Step 5 – Dangerousness**

The court should consider whether having regard to the criteria contained in [Chapter 6 of Part 10 of the Sentencing Code](#) it would be appropriate to impose an extended sentence (sections [266](#) and [279](#)).

### **Step 6 – 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 offending behaviour. See [Totality](#) guideline.

### **Step 7 – Compensation and ancillary orders**

In all cases, the court should consider whether to make [compensation](#) and/or other ancillary orders.

- [Ancillary orders – Magistrates' Court](#)
- [Ancillary orders – Crown Court Compendium](#)

### **Step 8 – Reasons**

[Section 52 of the Sentencing Code](#) imposes a duty to give reasons for, and explain the effect of, the sentence.

### **Step 9 – 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 and [section 325 of the Sentencing Code](#).

## **Inflicting grievous bodily harm/ Unlawful wounding/ Racially or religiously aggravated GBH/ Unlawful wounding**

Offences against the Person Act 1861, s.20, Crime and Disorder Act 1998, s.29

**Effective from: 1 July 2021**

**Inflicting grievous bodily harm/unlawful wounding**, Offences against the Person Act 1861 (section 20)

**Racially or religiously aggravated GBH/unlawful wounding**, Crime and Disorder Act 1998 (section 29)

Triable either way

### **Section 20**

Maximum: 5 years' custody

### **Section 29**

Maximum: 7 years' custody

Offence range: Community order – 4 years 6 months' custody

These are specified offences for the purposes of sections [266](#) and [279](#) (extended sentence for certain violent, sexual or terrorism offences) of the Sentencing Code.

Guideline users should be aware that the [Equal Treatment Bench Book](#) covers important aspects of fair treatment and disparity of outcomes for different groups in the criminal justice system. It provides guidance which sentencers are encouraged to take into account wherever applicable, to ensure that there is fairness for all involved in court proceedings.

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

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

**Culpability** demonstrated by one or more of the following:

The level of culpability is determined by weighing up all the factors of the case. **Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics giving appropriate weight to relevant factors to reach a fair assessment of the offender's culpability.**

**A - High culpability**

- Significant degree of planning or premeditation
- Victim obviously vulnerable due to age, personal characteristics or circumstances
- Use of a highly dangerous weapon or weapon equivalent\*
- Strangulation/Suffocation/Asphyxiation
- Leading role in group activity
- Prolonged/persistent assault

**B – Medium culpability**

- Use of a weapon or weapon equivalent which does not fall within category A
- Lesser role in group activity
- Cases falling between category A or C because:
  - Factors in both high and lesser categories are present which balance each other out; and/or
  - The offender's culpability falls between the factors as described in high and lesser culpability

**C – Lesser culpability**

- No weapon used
- Excessive self defence
- Impulsive/spontaneous and short-lived assault
- Mental disorder or learning disability, where linked to the commission of the offence

\* A highly dangerous weapon **can include** weapons such as knives and firearms. **Highly dangerous** weapon equivalents can include corrosive substances (such as acid), whose dangerous nature must be substantially above and beyond the legislative definition of an offensive weapon which is; *'any article made or adapted for use for causing injury, or is intended by the person having it with him for such use'*. The court must determine whether the weapon or weapon equivalent is highly dangerous on the facts and circumstances of the case.



<b>Harm</b>	
All cases will involve 'really serious harm', which can be physical or psychological, or wounding. The court should assess the level of harm caused with reference to the impact on the victim	
<b>Category 1</b>	<p>Particularly grave and/or life-threatening injury caused</p> <p>Injury results in physical or psychological harm resulting in lifelong dependency on third party care or medical treatment</p> <p>Offence results in a permanent, irreversible injury or condition which has a substantial and long term effect on the victim's ability to carry out <b>their</b> normal day to day activities or on their ability to work</p>
<b>Category 2</b>	<p>Grave injury</p> <p>Offence results in a permanent, irreversible injury or condition not falling within category 1</p>
<b>Category 3</b>	<p>All other cases of really serious harm</p> <p>All other cases of wounding</p>

## STEP TWO

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

**Sentencers should be aware that there is evidence of a disparity in sentence outcomes for this offence which indicates that a higher proportion of Black, Mixed and Chinese or Other ethnicity offenders receive an immediate custodial sentence than White and Asian offenders. There may be many reasons for these differences, but in order to apply the guidelines fairly sentencers may find useful information and guidance at Chapter 8 paragraphs 123 to 129 of the [Equal Treatment Bench Book](#).**

HARM	CULPABILITY		
	A	B	C
Harm 1	<p><b>Starting point</b> 4 years' custody</p> <p><b>Category Range</b> 3 years– 4 years 6 months' custody</p>	<p><b>Starting point</b> 3 years' custody</p> <p><b>Category Range</b> 2 -4 years' custody</p>	<p><b>Starting point</b> 2 years' custody</p> <p><b>Category Range</b> 1-3 years' custody</p>
Harm 2	<p><b>Starting point</b> 3 years' custody</p> <p><b>Category Range</b> 2 -4 years' custody</p>	<p><b>Starting point</b> 2 years' custody</p> <p><b>Category Range</b> 1-3 years' custody</p>	<p><b>Starting point</b> 1 year's custody</p> <p><b>Category Range</b> High level community order - 2 years' custody</p>
Harm 3	<p><b>Starting point</b> 2 years' custody</p> <p><b>Category Range</b> 1-3 years' custody</p>	<p><b>Starting point</b> 1 year's custody</p> <p><b>Category Range</b> High level community order - 2 years' custody</p>	<p><b>Starting point</b> 26 weeks' custody</p> <p><b>Category Range</b> Medium level community order – 1 year's custody</p>

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

### Factors increasing seriousness

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

Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction

Offence committed whilst on bail

Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: disability, sexual orientation or transgender identity

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

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

Offence committed against those working in the public sector or providing a service to the public or against a person coming to the assistance of an emergency worker

Offence committed in prison (where not taken into account as a statutory aggravating factor)

Offence committed in domestic context

History of violence or abuse towards victim by offender

Presence of children

Gratuitous degradation of victim

Abuse of power and/or position of trust

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Commission of offence whilst under the influence of alcohol/drugs

Offences taken into consideration (TICs)

Offence committed whilst on licence or post sentence supervision

Failure to comply with current court orders

**Factors reducing seriousness or reflecting personal mitigation**

No previous convictions or no relevant/recent convictions

Remorse

Good character and/or exemplary conduct

Significant degree of provocation

History of significant violence or abuse towards the offender by the victim

Age and/or lack of maturity

Mental disorder or learning disability, where not linked to the commission of the offence

Sole or primary carer for dependent relative(s)

Determination and/or demonstration of steps taken to address addiction or offending behaviour

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

<b>RACIALLY OR RELIGIOUSLY AGGRAVATED OFFENCES ONLY</b>
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Having determined the category of the basic offence to identify the sentence of a non-aggravated offence, the court should now consider the level of racial or religious aggravation involved and apply an appropriate uplift to the sentence in accordance with the guidance below. The following is a list of factors which the court should consider to determine the level of aggravation. Where there are characteristics present which fall under different levels of aggravation, the court should balance these to reach a fair assessment of the level of aggravation present in the offence.

**Maximum sentence for the aggravated offence on indictment is 7 years' custody (maximum when tried summarily is 6 months' custody)**

<b>Care should be taken to avoid double counting factors already taken into account in assessing the level of harm at step one</b>
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<b>HIGH LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION</b>	<b>SENTENCE UPLIFT</b>
<ul style="list-style-type: none"> <li>▪ Racial or religious aggravation was the predominant motivation for the offence.</li> <li>▪ Offender was a member of, or was associated with, a group promoting hostility based on race or religion.</li> <li>▪ Aggravated nature of the offence caused severe distress to the victim or the victim's family (<b>over and above the distress already considered at step one</b>).</li> <li>▪ Aggravated nature of the offence caused serious fear and distress throughout local community or more widely.</li> </ul>	<p>Increase the length of custodial sentence if already considered for the basic offence <b>or</b> consider a custodial sentence, if not already considered for the basic offence.</p>
<b>MEDIUM LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION</b>	<b>SENTENCE UPLIFT</b>
<ul style="list-style-type: none"> <li>▪ Racial or religious aggravation formed a significant proportion of the offence as a whole.</li> <li>▪ Aggravated nature of the offence caused some distress to the</li> </ul>	<p>Consider a significantly more onerous penalty of the same type <u>or consider</u> a more severe type of sentence than for the basic offence.</p>

<p>victim or the victim's family <b>(over and above the distress already considered at step one)</b>.</p> <ul style="list-style-type: none"> <li>▪ Aggravated nature of the offence caused some fear and distress throughout local community or more widely.</li> </ul>	
<p><b>LOW LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION</b></p>	<p><b>SENTENCE UPLIFT</b></p>
<ul style="list-style-type: none"> <li>▪ Aggravated element formed a minimal part of the offence as a whole.</li> <li>▪ Aggravated nature of the offence caused minimal or no distress to the victim or the victim's family <b>(over and above the distress already considered at step one)</b>.</li> </ul>	<p>Consider a more onerous penalty of the same type identified for the basic offence.</p>

Magistrates may find that, although the appropriate sentence for the basic offence would be within their powers, the appropriate increase for the aggravated offence would result in a sentence in excess of their powers. If so, they must commit for sentence to the Crown Court. **The sentencer should state in open court that the offence was aggravated by reason of race or religion, and should also state what the sentence would have been without that element of aggravation.**

### **Step 3 – Consider any other factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account [section 74 of the Sentencing Code](#) (reduction in sentence for assistance to prosecution) 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 4 – Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with [section 73 of the Sentencing Code](#) and the [Reduction in Sentence for a Guilty Plea](#) guideline.

### **Step 5 – Dangerousness**

Racially or religiously aggravated common assault is a specified offence. The court should consider whether having regard to the criteria contained in [Chapter 6 of Part 10 of the Sentencing Code](#) it would be appropriate to impose an extended sentence (sections [266](#) and [279](#)).

### **Step 6 – 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 offending behaviour. See [Totality](#) guideline.

### **Step 7 – Compensation and ancillary orders**

In all cases, the court should consider whether to make [compensation](#) and/or other ancillary orders.

- [Ancillary orders – Magistrates' Court](#)
- [Ancillary orders – Crown Court Compendium](#)

### **Step 8 – Reasons**

[Section 52 of the Sentencing Code](#) imposes a duty to give reasons for, and explain the effect of, the sentence.

### **Step 9 – 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 and [section 325 of the Sentencing Code](#).

## Causing grievous bodily harm with intent to do grievous bodily harm / Wounding with intent to do GBH

Offences against the Person Act 1861, s.18

Effective from: 1 July 2021

Triable only on indictment

Maximum: Life imprisonment

Offence range: 2–16 years' custody

This is a [Schedule 19](#) offence for the purposes of sections [274](#) and [285](#) (required life sentence for offence carrying life sentence) of the Sentencing Code.

For offences committed on or after 3 December 2012, this is an offence listed in [Part 1 of Schedule 15](#) for the purposes of sections [273](#) and [283](#) (life sentence for second listed offence) of the Sentencing Code.

This is a specified offence for the purposes of sections [266](#) and [279](#) (extended sentence for certain violent, sexual or terrorism offences) of the Sentencing Code.

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Guideline users should be aware that the [Equal Treatment Bench Book](#) covers important aspects of fair treatment and disparity of outcomes for different groups in the criminal justice system. It provides guidance which sentencers are encouraged to take into account wherever applicable, to ensure that there is fairness for all involved in court proceedings.



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

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

**Culpability demonstrated by one or more of the following:**

The level of culpability is determined by weighing up all the factors of the case. Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics giving appropriate weight to relevant factors to reach a fair assessment of the offender's culpability.

**A - High culpability**

- Significant degree of planning or premeditation
- Victim obviously vulnerable due to age, personal characteristics or circumstances
- Use of a highly dangerous weapon or weapon equivalent\*
- Strangulation/Suffocation/Asphyxiation
- Leading role in group activity
- Prolonged/persistent assault
- Revenge

**B – Medium culpability**

- Use of a weapon or weapon equivalent which does not fall within category A
- Lesser role in group activity
- Cases falling between category high and low culpability because:
  - Factors in both high and lesser categories are present which balance each other out; **and/or**
  - The offender's culpability falls between the factors as described in high and lesser culpability

**C – Lesser culpability**

- No weapon used
- Excessive self defence
- Offender acted in response to prolonged or extreme violence or abuse by victim
- Mental disorder or learning disability, where linked to the commission of the offence

\* A highly dangerous weapon **can include** weapons such as knives and firearms. **Highly dangerous** weapon equivalents can include corrosive substances (such as acid), whose dangerous nature must be substantially above and beyond the legislative definition of an offensive weapon which is; *'any article made or adapted for use for causing injury, or is intended by the person having it with him for such use'*. The court must determine whether the weapon or weapon equivalent is highly dangerous on the facts and circumstances of the case. Non-highly dangerous weapon equivalents may include but are not limited to a shod foot, headbutting, use of animal in commission of offence.

<b>Harm</b>	
All cases will involve 'really serious harm', which can be physical or psychological, or wounding. The court should assess the level of harm caused with reference to the impact on the victim	
<b>Category 1</b>	<p>Particularly grave or life-threatening injury caused</p> <p>Injury results in physical or psychological harm resulting in lifelong dependency on third party care or medical treatment</p> <p>Offence results in a permanent, irreversible injury or psychological condition which has a substantial and long term effect on the victim's ability to carry out <b>their</b> normal day to day activities or on their ability to work</p>
<b>Category 2</b>	<p>Grave injury</p> <p>Offence results in a permanent, irreversible injury or condition not falling within category 1</p>
<b>Category 3</b>	<p>All other cases of really serious harm</p> <p>All other cases of wounding</p>

## STEP TWO

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

**Sentencers should be aware that there is evidence of a disparity in sentence outcomes for this offence which indicates that for Black and Asian offenders immediate custodial sentence lengths have on average been longer than for White, Mixed and Chinese or Other ethnicity offenders. There may be many reasons for these differences, but in order to apply the guidelines fairly sentencers may find useful information and guidance at Chapter 8 paragraphs 123 to 129 of the [Equal Treatment Bench Book](#).**

For category A1 offences the extreme nature of one or more high culpability factors or the extreme impact caused by a combination of high culpability factors may attract a sentence higher than the offence category range

HARM	CULPABILITY		
	A	B	C
<b>Harm 1</b>	<p><b>Starting point</b> 12 years' custody</p> <p><b>Category Range</b> 10-16 years' custody</p>	<p><b>Starting point</b> 7 years' custody</p> <p><b>Category Range</b> 6-10 years' custody</p>	<p><b>Starting point</b> 5 years' custody</p> <p><b>Category Range</b> 4-7 years' custody</p>
<b>Harm 2</b>	<p><b>Starting point</b> 7 years' custody</p> <p><b>Category Range</b> 6-10 years' custody</p>	<p><b>Starting point</b> 5 years' custody</p> <p><b>Category Range</b> 4-7 years' custody</p>	<p><b>Starting point</b> 4 years' custody</p> <p><b>Category Range</b> 3 – 6 years' custody</p>
<b>Harm 3</b>	<p><b>Starting point</b> 5 years' custody</p> <p><b>Category Range</b> 4-7 years' custody</p>	<p><b>Starting point</b> 4 years' custody</p> <p><b>Category Range</b> 3-6 years' custody</p>	<p><b>Starting point</b> 3 years' custody</p> <p><b>Category Range</b> 2-4 years' custody</p>

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

### Factors increasing seriousness

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

Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction

Offence committed whilst on bail

Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: race, religion, disability, sexual orientation or transgender identity

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

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

Offence committed against those working in the public sector or providing a service to the public or against a person coming to the assistance of an emergency worker

Offence committed in prison (where not taken into account as a statutory aggravating factor)

Offence committed in domestic context

History of violence or abuse towards victim by offender (where not taken into account at step one)

Presence of children

Gratuitous degradation of victim

Abuse of power and/or position of trust

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Commission of offence whilst under the influence of alcohol/drugs

Offences taken into consideration (TICs)

Offence committed whilst on licence or subject to post sentence supervision

Failure to comply with current court orders

**Factors reducing seriousness or reflecting personal mitigation**

No previous convictions or no relevant/recent convictions

Remorse

Good character and/or exemplary conduct

Significant degree of provocation

History of significant violence or abuse towards the offender by the victim (where not taken into account at step one)

Age and/or lack of maturity

Mental disorder or learning disability, where not linked to the commission of the offence

Sole or primary carer for dependent relative(s)

Determination and/or demonstration of steps taken to address addiction or offending behaviour

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

### **Step 3 – Consider any other factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account [section 74 of the Sentencing Code](#) (reduction in sentence for assistance to prosecution) 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 4 – Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with [section 73 of the Sentencing Code](#) and the [Reduction in Sentence for a Guilty Plea](#) guideline.

### **Step 5 – Dangerousness**

The court should consider:

- 1) whether having regard to the criteria contained in [Chapter 6 of Part 10 of the Sentencing Code](#) it would be appropriate to impose a life sentence (sections [274](#) and [285](#))
- 2) whether having regard to sections [273](#) and [283](#) of the Sentencing Code it would be appropriate to impose a life sentence.
- 3) whether having regard to the criteria contained in [Chapter 6 of Part 10 of the Sentencing Code](#) it would be appropriate to impose an extended sentence (sections [266](#) and [279](#))

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 6 – 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 offending behaviour. See [Totality](#) guideline.

### **Step 7 – Compensation and ancillary orders**

In all cases, the court should consider whether to make [compensation](#) and/or other ancillary orders.

- [Ancillary orders – Crown Court Compendium](#)

### **Step 8 – Reasons**

[Section 52 of the Sentencing Code](#) imposes a duty to give reasons for, and explain the effect of, the sentence.

### **Step 9 – 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 and [section 325 of the Sentencing Code](#).

## Attempted murder

**Criminal Attempts Act 1981, s.1(1)**

**Effective from: 1 July 2021**

Triable only on indictment

Maximum: Life imprisonment

Offence range: 3 – 40 years' custody

This is a [Schedule 19](#) offence for the purposes of sections [274](#) and [285](#) (required life sentence for offence carrying life sentence) of the Sentencing Code.

For offences committed on or after 3 December 2012, this is an offence listed in [Part 1 of Schedule 15](#) for the purposes of sections [273](#) and [283](#) (life sentence for second listed offence) of the Sentencing Code.

This is a specified offence for the purposes of sections [266](#) and [279](#) (extended sentence for certain violent, sexual or terrorism offences) of the Sentencing Code.

Where the offence has a terrorist connection this is an offence listed in [Schedule 13](#) for the purposes of sections [265](#) and [278](#) (required special sentence for certain offenders of particular concern) of the Sentencing Code.

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Guideline users should be aware that the [Equal Treatment Bench Book](#) covers important aspects of fair treatment and disparity of outcomes for different groups in the criminal justice system. It provides guidance which sentencers are encouraged to take into account wherever applicable, to ensure that there is fairness for all involved in court proceedings.

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

The characteristics below are indications of the level of culpability that may attach to the offender's conduct. Where there are characteristics present which fall into both higher and lower categories, the court must carefully weigh those characteristics to reach a fair assessment of the category which best reflects the offender's overall culpability in all the circumstances of the case. The court may then adjust the starting point for that category to reflect the presence of characteristics from another category.

**Culpability demonstrated by one or more of the following:**

A – Very High culpability	<ul style="list-style-type: none"> <li>• Abduction of the victim with intent to murder</li> <li>• Attempted murder of a child</li> <li>• Offence motivated by or involves sexual or sadistic conduct</li> <li>• Offence involves the use of a firearm or explosive or fire</li> <li>• Offence committed for financial gain</li> <li>• Attempted murder of a police officer or prison officer in the course of their duty</li> <li>• Offence committed for the purpose of advancing a political, religious, racial or ideological cause</li> <li>• Offence intended to obstruct or interfere with the course of justice</li> <li>• Offence racially or religiously aggravated or aggravated by sexual orientation, disability or transgender identity</li> </ul>
B- High culpability	<ul style="list-style-type: none"> <li>• Offender took a knife or other weapon to the scene intending to commit any offence or have it available to use as a weapon, and used that knife or other weapon in committing the offence.</li> <li>• Planning or premeditation of murder</li> </ul>
C - Medium culpability	<ul style="list-style-type: none"> <li>• Use of weapon not in category A or B</li> <li>• Lack of premeditation/spontaneous attempt to kill</li> </ul>
D- Lesser culpability	<ul style="list-style-type: none"> <li>• Excessive self defence</li> <li>• Offender acted in response to prolonged or extreme violence or abuse by victim</li> <li>• Offender's responsibility substantially reduced by mental disorder or learning disability</li> <li>• Genuine belief by the offender that the offence was an act of mercy</li> </ul>



Harm	
<b>Category 1</b>	<p>Injury results in physical or psychological harm resulting in lifelong dependency on third party care or medical treatment</p> <p>Offence results in a permanent, irreversible injury or psychological condition which has a substantial and long term effect on the victim's ability to carry out <b>their</b> normal day to day activities or on their ability to work</p>
<b>Category 2</b>	Serious physical or psychological harm not in category 1
<b>Category 3</b>	All other cases

## STEP TWO

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below before further adjustment for aggravating or mitigating features, set out below.

**Sentencers should be aware that there is evidence of a disparity in sentence outcomes for this offence which indicates that for Black and Asian offenders custodial sentence lengths have on average been longer than for White offenders. There may be many reasons for these differences, but in order to apply the guidelines fairly sentencers may find useful information and guidance at Chapter 8 paragraphs 123 to 129 of the [Equal Treatment Bench Book](#).**

For offences involving an extreme nature of one or more very high or high culpability factors a sentence higher than the offence category range or an extended or life sentence may be appropriate. Extended and life sentences are dealt with at Step 5 of the guideline.

HARM	CULPABILITY			
	A	B	C	D
Harm 1	<b>Starting point</b> 35 years	<b>Starting point</b> 30	<b>Starting point</b> 25	<b>Starting point</b> 14
	<b>Category Range</b> 30 - 40	<b>Category Range</b> 25-35	<b>Category Range</b> 20-30	<b>Category Range</b> 10-20
Harm 2	<b>Starting point</b> 30 years	<b>Starting point</b> 25	<b>Starting point</b> 20	<b>Starting point</b> 8
	<b>Category Range</b> 25-35	<b>Category Range</b> 20-30	<b>Category Range</b> 15-25	<b>Category Range</b> 5-12
Harm 3	<b>Starting point</b> 25	<b>Starting point</b> 20	<b>Starting point</b> 10	<b>Starting point</b> 5
	<b>Category Range</b> 20-30	<b>Category Range</b> 15-25	<b>Category Range</b> 7-15	<b>Category Range</b> 3-6

Note: The table is for a single offence against a single victim. Where another offence or offences arise out of the same incident or facts, concurrent sentences **reflecting the overall criminality** of offending will ordinarily be appropriate: please refer to the *Offences Taken into Consideration and Totality guideline*.

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

### **Factors increasing seriousness**

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

Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction

Offence committed whilst on bail

Offence motivated by, or demonstrating hostility based on any of the following characteristics of the victim: disability, sexual orientation or gender identity

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

Offence committed against those working in the public sector or providing a service to the public

Offence committed in prison

Offence committed in domestic context

History of violence or abuse towards victim by offender (where not taken into account at step one)

Abuse of position of trust

Gratuitous degradation of victim

Others put at risk of harm by the offence

Use of duress or threats against another person to facilitate the commission of the offence

Actions after the event (including but not limited to attempts to cover up/conceal evidence)

Steps taken to prevent the victim from seeking or receiving medical assistance

Commission of offence whilst under the influence of alcohol/drugs

Offence committed whilst on licence or subject to post sentence supervision

Failure to comply with current court orders

### **Factors reducing seriousness or reflecting personal mitigation**

No previous convictions or no relevant/recent convictions

Significant degree of provocation (including due to prolonged and/or excessive stress linked to circumstances of offence)

History of significant violence or abuse towards the offender by the victim (where not taken into account at step one)

Attempt by offender to give assistance/summon help when the attempted murder failed

Remorse

Good character and/or exemplary conduct

Age and/or lack of maturity

Mental disorder or learning disability, where not linked to the commission of the offence (where not taken into account at step one)

Sole or primary carer for dependent relative(s)

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

### **Step 3 – Consider any other factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account [section 74 of the Sentencing Code](#) (reduction in sentence for assistance to prosecution) 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 4 – Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with [section 73 of the Sentencing Code](#) and the [Reduction in Sentence for a Guilty Plea](#) guideline.

### **Step 5 – Dangerousness**

The court should consider:

- 1) whether having regard to the criteria contained in [Chapter 6 of Part 10 of the Sentencing Code](#) it would be appropriate to impose a life sentence (sections [274](#) and [285](#))
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- 3) whether having regard to the criteria contained in [Chapter 6 of Part 10 of the Sentencing Code](#) it would be appropriate to impose an extended sentence (sections [266](#) and [279](#))

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 6 – Required special sentence for certain offenders of particular concern**

Where the offence has a terrorist connection and satisfies the criteria in section [278](#) of the Sentencing Code 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 1 year for which the offender is to be subject to a licence (sections [265](#) and [278](#) of the Sentencing Code).

### **Step 7 – 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 offending behaviour. See [Totality](#) guideline.

### **Step 8 – Compensation and ancillary orders**

In all cases, the court should consider whether to make [compensation](#) and/or other ancillary orders.

- [Ancillary orders – Crown Court Compendium](#)

## **Step 9 – Reasons**

[Section 52 of the Sentencing Code](#) imposes a duty to give reasons for, and explain the effect of, the sentence.

## **Step 10 – 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 and [section 325 of the Sentencing Code](#).

## Annex B

	Category 1	Category 2	Category 3
Knocked out victim's front teeth. Victim had to undergo dental treatment, and now feels reluctance to go out/nervous in the street and public places.	81.6% (169)	16.4% (34)	1.9% (4)
Spat in victim's face and beat up victim in a sustained assault resulting in a head injury (subarachnoid haemorrhage).	88.9% (184)	9.7% (20)	1.4% (3)
Bite marks to victim's arm causing pain and reddening of skin for a few days.	4.8% (10)	36.2% (75)	58.9% (122)
Injuries amounted to severe bruising and swelling and took 3 weeks to be completely healed and no longer visible.	9.2% (19)	59.9% (124)	30.9% (64)
Injuries included weakness to knee, head injury caused temporary blurred vision, and symptoms to the soft tissue of the neck caused discomfort for one week.	13.5% (28)	68.1% (141)	18.4% (38)
Deep two-inch cut to the back of victim's neck and other small cuts and scratches.	34.3% (71)	49.8% (103)	15.9% (33)
Bit victim's finger causing fracture. Significant pain and required pinning and wiring.	66.2% (137)	32.9% (68)	1.0% (2)
Pierced victim's neck with a sharp object stating it was a dirty heroin needle. Victim feared contracting HIV and/or Hepatitis B and on medication which has caused side effects making him sick. Deep distress suffered.	97.1% (201)	1.4% (3)	1.4% (3)
Injuries caused by punching and kicking, bruising from head to toe; sustained bruising to the upper left shoulder and neck, bruising to lower back, bruising to the back of right arm, bruising to the left arm, bruising to the left side of the face and neck including a black eye, bruising to legs, bruising to the side of torso.	60.9% (126)	37.2% (77)	1.9% (4)
Swollen wrist and pain to hand. Victim suffered panic attacks and needed to take 2 months off work.	42.5% (88)	54.6% (113)	2.9% (6)
Superficial cuts to neck and finger, swollen knee.	2.4% (5)	7.7% (16)	89.9% (186)
Soft tissue injuries to face; no permanent physical injury but ongoing psychological effects, waking up with nightmares and suffers anxiety.	30.9% (64)	64.3% (133)	4.8% (10)
Injuries to victim's hands causing serious discomfort but no lasting effects.	1.9% (4)	24.6% (51)	73.4% (152)
Injuries to leg; not broken but nerve damage and permanent scar, affects victim's walking and causes pain.	76.8% (159)	21.7% (45)	1.4% (3)
Multiple injuries including bruising, black eye, a bleed below the skin of the eye and a haemorrhage in inner ear.	49.3% (102)	48.8% (101)	1.9% (4)
Cuts and bruises and victim very distressed and scared to be in house alone.	22.2% (46)	66.2% (137)	11.6% (24)
Dislocated elbow, anaesthetic required to treat at hospital.	30.4% (63)	57.0% (118)	12.6% (26)
Bleeding and injury to eye, bruising and grazing to groin and leg.	9.2% (19)	61.4% (127)	29.5% (61)
Broken nose which is still deviated and several broken teeth which will require operations and medical treatment to rectify.	85.5% (177)	13.5% (28)	1.0% (2)
Pain and bruising to thighs and buttocks lasted for a week.	2.4% (5)	19.8% (41)	77.8% (161)

**Annex B**

	<b>Category 1</b>	<b>Category 2</b>	<b>Category 3</b>
Pain to head and some hair loss from hair pulling and pain to shoulder lasted a few days.	1.9% (4)	30.4% (63)	67.6% (140)
Bruising and reddening to neck from strangulation, victim feared death.	60.4% (125)	36.7% (76)	2.9% (6)
Broken nose, fully recovered after 3 weeks.	10.6% (22)	72.5% (150)	16.9% (35)
Loss of consciousness for a few minutes and temporary lump and swelling to back of head.	18.4% (38)	62.8% (130)	18.8% (39)
Victim punched 3 times in face, causing broken nose, black eyes and split lip.	37.7% (78)	53.6% (111)	8.7% (18)



### **Assault Offences Sentencing Outcomes by Ethnicity**

This paper highlights the statistics on the distribution of sentencing outcomes and the average (mean) custodial sentence lengths (ACSL) for assault offences by ethnicity, this information has been used to inform the disparity wording that has been included within the guidelines.

Please note:

- The proportions presented below have been calculated excluding offenders recorded as 'otherwise dealt with'.
- Offences marked with an asterisk (\*) are those for which we have included disparity wording within the guideline. Where no asterisk is present, it denotes that no obvious evidence of disparity was found.
- For most offences, figures are presented for 2019 only, for offences with low volumes, data from 2015-2019 has been grouped together to allow for more meaningful analysis.
- Offenders with unknown or unrecorded ethnicity have been excluded from the analysis.

#### **Common Assault**

- In 2019, there were generally similar outcomes across all ethnicity, the most common outcome across all ethnic groups was a community sentence.
- The ACSL was broadly similar across ethnicities (ranging between 2.8 and 3 months).

#### **Racially of religiously aggravated common assault**

- Sentencing outcomes were broadly similar across all ethnicities in 2019, and as seen for common assault, the most frequent outcome was a community sentence.

#### **Assault on emergency workers**

- In 2019, around 60 per cent of offenders of all ethnicities received a fine or community order.
- For those sentenced to immediate custody, the ACSL was similar across all ethnicities (2.6 months for all ethnicities except Asian which was 2.0 months)

#### **Assault with intent to resist arrest \***

- Between 2015 and 2019, a higher proportion of Black and Mixed offenders (36 per cent and 38 per cent) received an immediate custodial, compared to 28 per cent of White offenders, 24 per cent of Asian offenders and 20 per cent of Chinese or Other ethnicity offenders.
- For those receiving an immediate custodial sentence, the ACSL was broadly similar across all ethnicities.

#### **Assault occasioning actual bodily harm \***

- In 2019, a higher proportion of Black (50 per cent) and Mixed offenders (57 per cent) received an immediate custodial sentence, compared to White (43 per cent), Asian (40 per cent) and Chinese or Other ethnicity offender (34 per cent).
- The ACSL's were very similar across ethnicities (around 13 months in 2019).

**Racially/religiously aggravated assault occasioning actual bodily harm**

- Between 2015 and 2019, there were very low volume of Black, Asian, Mixed and Chinese or Other ethnicity offenders sentenced for this offence.
- Of those that were sentenced, outcomes were broadly similar across ethnicities.

**Inflicting grievous bodily harm/unlawful wounding (s20) \***

- In 2019, a higher proportion of Black (64%), Mixed (69%) and Chinese or Other (65%) ethnicity offenders received an immediate custodial sentence than White and Asian offenders (54% and 55%).
- The ACSL was broadly stable among the ethnicities, ranging between 21 and 23 months.

**Racially/religiously aggravated grievous bodily harm/unlawful wounding**

- Between 2015 and 2019, there were very few offenders sentenced for this offence and nearly all were White.

**Grievous bodily harm/wounding with intent (s18) \***

- In 2019, almost all offenders were sentenced to immediate custody (around 96%).
- The ACSL was approximately a year higher for Black and Asian offenders (7.7 years and 7.5 years), than for White, Mixed and Chinese or Other ethnicity offenders (6.7 years, 6.4 years and 6.5 years respectively).

**Attempted murder \***

- Between 2015 and 2019, nearly all offenders received immediate custody (1 White offender received a suspended sentence).
- The ACSL for Black and Asian offenders was higher than for White offenders (14.8 and 21.1 years compared to 13.8 years).<sup>1</sup>

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<sup>1</sup> Mixed and Chinese or Other ethnicity offenders have been excluded from this due to very small volume of offenders sentenced.

### Costs and effectiveness of sentencing

1. The Council's duty in relation to this appears in two sections of the C&JA 2009: section 120, where the he cost of different sentences and their relative effectiveness in preventing reoffending, and section 129, which covers promoting awareness of this.
2. Clearly the 'effectiveness' of sentencing can be considered more broadly than simply the way in which it is effective in terms of reducing reoffending. However, given that the statute gives particular weight to this aspect, the Council has primarily chosen to focus on this.
3. The legislation itself does not specify how the Council must have regard to this factor, nor provide for how to weigh up this factor alongside the other matters to which the Council is required to have regard, some of which may be in conflict.
4. The Council's approach to this in recent years has been to produce an annual internal document outlining the latest research evidence in this area regarding reoffending. The evidence review is not intended directly to influence the Council's deliberations on any individual guideline but to supplement Council members' significant existing expertise and experience in sentencing matters, which is brought to bear in discussions when considering the development of guidelines.
5. Given the Council's limited budget and, therefore, our research capability, we have considered this to be a practical and proportionate way to ensure that all Council members have a shared understanding of the current literature relating to sentencing and reoffending.
6. In addition, the Council, where applicable, already considers issues related to effectiveness in the guidelines. For example, in *Domestic burglary*, it states:
 

*Where the defendant is dependent on or has a propensity to misuse drugs and there is sufficient prospect of success, a community order with a drug rehabilitation requirement under section 209 of the Criminal Justice Act 2003 may be a proper alternative to a short or moderate custodial sentence*
7. Similarly, the Council's *Imposition* guideline includes 'realistic prospect of rehabilitation' as one of the factors that indicate that it may be appropriate to suspend a custodial sentence.
8. On costs, the Council has generally chosen not to address costs or cost-effectiveness in resource assessments explicitly beyond the inclusion of the costs of correctional resources. At one point, we included some limited additional information in the Annual Report, but have not done this recently.

9. There are two reasons why we have not pursued this area more fully: firstly, in any individual case, the cost of a sentence should not be considered when deciding upon the most appropriate disposal for that case. Secondly, meaningful analysis of the data in relation to cost-effectiveness is difficult and the resources required to do even a small amount of work in this area would be significant. It would be extremely difficult to isolate the effect of guidelines specifically on any reduction in reoffending or to identify, in a meaningful way, what the total cost of any guideline-related reoffending might be. For these reasons, whenever the Council has revisited this topic, for example following the recommendations of [Professor Bottoms' report](#),<sup>[1]</sup> we have not been convinced of the value of carrying out additional research in this area or of integrating any such information within guidelines themselves.
10. However, the Council has been criticised in the past for not having done more in relation to this. As a result, we have considered what more we might do in this particular area but have identified a number of practical difficulties.
11. Resources are clearly a significant constraint. Carrying out or commissioning additional research of our own would divert resources away from other areas of the Council's activities, notably the production and monitoring of guidelines.
12. Further work would require the Council to take a view on how it defines 'effective' within this context. Ministry of Justice (MoJ) studies have a reasonably tight definition: proven reoffending within a year of release from custody, or the point of sentence for a community order. However, the Council is aware that there are arguments for alternative definitions within the academic community and, while there may be practical benefits for adopting a similar approach to the MoJ studies, the Council does not consider that there is a clear objective rationale for choosing that measure over another.
13. Finally, it is not obvious to what practical purpose carrying out further work in this area could be put. Our existing approach of bringing current research in this area to Council members' attention, and for them to have this in mind during their deliberations on individual guidelines, seems to work. This is, after all, just one of the matters to which the Council must have regard: current sentences, consistency, impact on victims, and the need to promote public confidence are all other matters that the Council must consider and weigh up when producing guidelines (see Annex B, which outlines all the Council's duties).

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<sup>[1]</sup> A Report on Research to Advise on how the Sentencing Council can best Exercise its Statutory Functions: <https://www.sentencingcouncil.org.uk/news/item/council-publishes-independent-review/>

14. We are also aware that there is a view from some quarters that that the Council should move beyond a strict focus on the statute – effectiveness of sentencing defined specifically in terms of reducing reoffending – and explore whether any work could be done in relation to the five purposes of sentencing more generally.<sup>[2]</sup> Some also feel that the concept of ‘desistance’<sup>[3]</sup> should feature more heavily, something about which much more is now known.
15. Bearing in mind the limitations to work in the area of effectiveness in sentencing outlined above, the Council is therefore seeking views as to what more we could do, either in terms of further research, or in the way that we currently have regard to this duty and the information we currently produce.

#### **CONSULTATION QUESTIONS ON COSTS AND EFFECTIVENESS IN SENTENCING**

**Question 21: Do you have any views on the way the Council has addressed the duty to have regard to the costs of sentencing and their relative effectiveness in preventing re-offending?**

**Question 22: Do you have any view on other aspects more broadly in terms of the ‘effectiveness’ of sentencing that the Council might want to consider and if so, how we would go about doing this? To what extent should any further work be prioritised above other areas of the Council’s activities?**

**Question 23: Should the Council carry out additional research in the area of effectiveness of reducing reoffending? What should the additional research priorities be?**

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<sup>[2]</sup> The purposes of sentencing: Criminal Justice Act 2003 S142(1):

(1) Any court dealing with an offender in respect of his offence must have regard to the following purposes of sentencing—

- (a) the punishment of offenders,
- (b) the reduction of crime (including its reduction by deterrence),
- (c) the reform and rehabilitation of offenders,
- (d) the protection of the public, and
- (e) the making of reparation by offenders to persons affected by their offences.

<sup>[3]</sup> In the field of criminology, desistance is generally defined as the cessation of offending or other antisocial behaviour.

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# THE EFFECTIVENESS OF SENTENCING OPTIONS

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A review of key research findings

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# EXECUTIVE SUMMARY

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- Reducing re-offending is one of five key sentencing objectives in England and Wales. Courts employ a range of sentences, from discharges to imprisonment. This paper summarises findings from the latest research exploring the relative effectiveness of the principal sanctions for more serious offending: immediate imprisonment, suspended sentence orders and community orders.
- In recent years, researchers have evaluated the relative effectiveness of these different sanctions by comparing the re-offending rates of those who have served a sentence of immediate imprisonment to those who served instead a community order or suspended sentence order.
- Comparing re-offending rates associated with different sanctions is challenging because high risk offenders are more likely to be sentenced to custody. This may explain why short sentences of imprisonment are associated with higher re-offending rates than community orders and suspended sentence orders.
- Recent research by the Ministry of Justice and other agencies compared re-offending rates for immediate imprisonment, suspended sentence orders and community orders, having first controlled for other explanatory factors. Re-offending rates for offenders sentenced to short terms of immediate imprisonment were higher than rates for offenders sentenced to either a community order or a suspended sentence order. Re-offending rates for offenders sentenced to community orders are typically higher than those given suspended sentence orders.
- It is too early to know whether the introduction of supervision upon release for short-term custodial sentences has been effective in reducing re-offending because of additional changes implemented around the same time.
- More research is needed to determine whether the type of sentence is related to re-offending rates by gender and ethnicity and to determine how different sentences meet the criminogenic needs of offenders and how they improve their lives more generally.
- Research should use longer follow-up periods to better evaluate the impact of sentences on long-term desistance.



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# 1. SCOPE OF REVIEW

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The purposes of sentencing were first specified in statute in the Criminal Justice Act 2003 and include punishment and the prevention of crime. This paper focuses on the possible preventive effectiveness of key criminal sanctions. Re-offending rates are the most common measure of effectiveness – although others have been proposed (and are discussed below). At sentencing, courts attempt to prevent further offending through the imposition of sanctions which deter, incapacitate, or rehabilitate offenders. To this end, sentencers employ a range of different disposals including: immediate custody; suspended sentence orders; community orders; and fines.<sup>1</sup> This paper reviews the latest evidence relating to the effectiveness of the first three of these sentences and summarises the latest cost estimates of different disposals.

The first part of this paper provides background information about effectiveness and re-offending. The paper then summarises research which compares the re-offending rates associated with different sanctions uncorrected for variables which may explain these differences. Then it describes findings from Ministry of Justice research (and other agencies) which compares re-offending rates after controlling for other relevant variables such as offenders' prior records and their risk of re-offending. As will be seen, the two bodies of research reach the same general conclusions. The paper concludes by noting some important research priorities.

## 2. BACKGROUND

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In England and Wales, sentencing is based on five key objectives: punishment, the reduction of crime; reparation; rehabilitation; and public protection.<sup>2</sup> Three of these purposes – crime reduction, rehabilitation and protecting the public – share a broader aim of reducing re-offending. The recent White Paper, *A Smarter Approach to Sentencing*, expressed concerns about repetitive crime by low-level and repeat offenders (Buckland 2020). The revolving door of justice carries great financial costs: The total estimated economic and social cost in England and Wales of re-offending by adults is £16.7 billion (Newton et al. 2019). This estimate includes expenses in relation to future crime, the consequences of crime and responses to crime.

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1 For very low level offending a court may instead impose either a conditional or absolute discharge.

2 Section 57 of the Sentencing Code.

### ***The Principal Sentences Available in England and Wales***

When determining which sanction to impose, courts in England and Wales apply a “custody threshold” at sentencing. This means that a court must not impose a custodial sentence unless it is of the opinion that the offence was sufficiently serious that neither a fine nor a community sentence would be justified.<sup>3</sup> This provision attempts to ensure that imprisonment is reserved for the most serious offences (Sentencing Council 2017). Courts have a range of different sentences to deploy at sentencing. The principal disposals for more serious offending include the following:<sup>4</sup>

Determinate prison sentences require immediate custody.<sup>5</sup> Offenders serve a fixed period of time in prison before automatic release. Offenders sentenced to determinate prison terms generally serve half of the period in prison and the remainder on licence in the community (although the picture is now a little more complicated as recent reforms to release arrangements mean that offenders serving longer sentences for certain sexual or violent offences have to serve two-thirds of their determinate term in custody before being released). If the person breaches any of the licence conditions, or commits any further offences during the licence period, he or she may be returned to prison.

Suspended sentence orders (SSOs) involve the imposition of a custodial sentence which is then suspended for a period to allow the offender to remain in the community. A custodial sentence of between 14 days to two years may be suspended and the suspension period may last up to two years. A sentencing judge may, but need not, impose one or more requirements upon the offender during the operational period of the SSO (the available requirements are the same as may be attached to a community order, specified below). If the person breaches any requirement imposed or commits a new offence, the court may order the person to serve their original custodial sentence. An SSO is considered a custodial sentence; before imposing an SSO the court must decide that the custody threshold has been crossed.

A community order can last up to 36 months and must include at least one specified requirement. When imposing a community order, courts select from a menu of requirements to address the offender’s needs and to promote his or her rehabilitation. In addition, the court must impose at least one condition that is punitive in nature. A court can impose any one or more of the following:<sup>6</sup>

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- 3 Section 230 of the Sentencing Code, replicating the earlier provision from the Criminal Justice Act 2003, states: ‘The court must not pass a custodial sentence unless it is of the opinion that 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’.
  - 4 Other sentences not discussed further in this paper include financial penalties and conditional and absolute discharges (whereby the person does not face an immediate punishment but is recorded as having a criminal record). This paper also does not consider out-of-court disposals.
  - 5 Some offenders receive indeterminate prison sentences – custodial sentences without a fixed release date. These offenders serve a minimum amount of time in prison (the minimum term) before being considered for release by the Parole Board. Release will only be directed by the Parole Board if it is satisfied that it is no longer necessary for the protection of the public for the person to remain in custody.
  - 6 Section 201 of the Sentencing Code.

- \* Unpaid work requirement
- \* Rehabilitation activity requirement
- \* Programme requirement
- \* Prohibited activity requirement
- \* Curfew requirement
- \* Exclusion requirement
- \* Residence requirement
- \* Foreign travel prohibition requirement
- \* Mental health requirement
- \* Drug Rehabilitation requirement
- \* Alcohol treatment requirement
- \* Alcohol abstinence and monitoring requirement
- \* Attendance centre requirement
- \* Electronic compliance monitoring requirement
- \* Electronic whereabouts monitoring requirement

In the year ending March 2020, the following distribution of sentences was recorded across England and Wales: Fines (78%), immediate custody (7%), community orders (7%), suspended sentence orders (3%) and conditional discharges (3%) (Ministry of Justice 2020a). Although fines are the most common sentence, this report examines immediate sentences of imprisonment, suspended sentences orders and community orders. There are several reasons for this focus. First, these three sanctions are the most expensive to administer and therefore need to be scrutinised most closely. Second, they attract the most media attention and public interest. Third, these three disposals often overlap in terms of the offenders on whom they are imposed. Under the sentencing regime in England and Wales, even if the case has passed the custody threshold, there may be reason to suspend the prison sentence or even impose a high-end community order. In cases which only just cross the custody threshold a court may consider immediate imprisonment, an SSO or a community order.

### ***Costs of Principal Sentences***

The costs of different sentences vary greatly. The Ministry of Justice does not routinely publish the costs of community orders and SSOs. However, the 2014/15 National Offender Management Service Business Plan noted that in 2012/13 the average cost per community order/SSO was £4,305 compared to an average cost of £36,808 for a prison place (National Offender Management Service 2014, p. 35). The costs of community-based supervision will of course vary, depending on the number and type of requirements imposed on the individual. The difference in costs between imprisonment and community-based sanctions has recently become more significant: 'The search for effective alternatives to custody has become even more urgent following the recent recession and the demand for governments to make cuts in public services, including the criminal justice system' (Abramovaite, et al. 2018, pp. 800-801). The renewed focus on alternative sanctions reflects

the fact that prisons in England and Wales are operating near capacity and the coronavirus pandemic has exacerbated the risks of imprisonment (Pope et al. 2020).

### ***Rate of Imprisonment and Relationship Between Prison Populations and Crime Rates***

The imprisonment rate in England and Wales is currently higher than most other European countries (Walmsley 2018). As the Lord Chief Justice noted in a recent speech, the length of custodial sentences has been increasing in recent years.<sup>7</sup> The imprisonment rate and the average sentence length imposed have both been increasing steadily. The custody rate for indictable offences<sup>8</sup> rose from 24.1% in 2010 to 35.1% in 2020,<sup>9</sup> an increase of 46%. Much of this increase is more recent: the first half of the decade saw an 11% increase in the custody rate for indictable offences, while the increase from 2015-2020 was 28%. Over the decade 2010-2020, the average custodial sentence length for all offences rose from 13.8 months to 19.5 months, an increase of 34%.<sup>10</sup>

The use of imprisonment may prevent crime through incapacitating effects, specific deterrence (i.e. encouraging the individual not to re-offend) and general deterrence (i.e. encouraging others not to offend). However, imprisonment itself can create criminogenic effects in facilitating criminal behaviour.

### ***The Use of Imprisonment as a Potential Contributor to Re-offending***

Offenders are sent to prison, in part, to prevent further offending, but imprisonment may also contribute to future offending.<sup>11</sup> There are a number of explanations for this apparent paradox. Ex-prisoners may lose many of the protective benefits that living in the community offers, including employment opportunities, pro-social relationships and safe housing (Sapouna et al. 2015). While in custody, prisoners have opportunities to interact with other individuals who may reinforce and encourage offending behaviours. Further, imprisonment labels ex-prisoners as 'deviant' and this may impede their efforts to lead crime-free lives after release (Abramovaite et al., 2018). Recent research has found that longer terms of imprisonment have adverse, criminogenic effects by reducing the opportunities for employment, housing, benefits and marriage (e.g. Ramakers et al. 2017). Short terms of imprisonment may be particularly counter-productive in different ways. The early weeks of imprisonment are often chaotic and transitioning back to the community is often challenging. Finally, the limited time in detention may be insufficient for rehabilitation programming to be successful (Cracknell 2018).

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7 Lord Chief Justice of England and Wales, UCL Judicial Institute Annual Lecture, 9 December 2020.

8 An indictable offence is either an either way offence (an offence that can be tried in either the magistrates' courts or the Crown Court) or an indictable only offence (which can be tried only in the Crown Court). These are the most serious offences.

9 Ministry of Justice (2020) *Criminal justice system statistics quarterly: June 2020*, Table Q5.2b. The custody rate increased more sharply for some high-volume offence categories. The custody rate for theft rose by 58% while for fraud it rose by 56%.

10 Ministry of Justice (2020) *Criminal justice system statistics quarterly: June 2020*, Table Q5.2c. Certain offence categories showed much higher increases: the average custodial sentence length for robbery over this period rose from 33.8 months to 53.7 months, an increase of 59%, while average sentence lengths for fraud rose by 85%.

11 The authors of a comprehensive research review concluded: 'A good deal of evidence indicates that incarceration, on average, increases the offending of those incarcerated' (Kleck and Sever, 2018, p. 305). More recently a review conducted by the Queensland Sentencing Advisory Council concluded that: 'At best, imprisonment has a marginal effect on recidivism. At worst, imprisonment increases the likelihood of reoffending' (Gelb et al. 2019, xii).

### 3. DEFINING EFFECTIVENESS

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In weighing the benefits and consequences of different types of penalties, officials often question which is most 'effective' (Ministry of Justice 2020b). A common research strategy involves comparing the re-offending rates of different disposals. Drawing causal inferences from this research is challenging. Studies that compare re-offending rates by type of sentence can only show a correlation between the type of sentence and the outcome (desistance or re-offending). Many factors other than sentence type may explain offending. For example, people may have particular characteristics that make them more likely to re-offend regardless of the type of sentence imposed and certain crime categories have long been associated with high re-offending rates – again independent of the sentence imposed.

Effectiveness can also have alternate meanings. Policy-makers may wish sentences to be effective in the more complete sense of desistance. Desistance refers to a long-term cessation in criminality for those who had a pattern of offending (Sapouna et al. 2015). Yet studies on re-offending tend to follow ex-offenders for relatively short periods of time (one to three years is common). The absence of offending during those follow-up periods does not necessarily mean that these individuals have achieved desistance. Indeed, the studies tend only to count offences that are known to police and their perpetrators identified as ex-offenders. This means that ex-offenders who commit offences yet who evaded prosecution and punishment may be mistakenly counted as successes. As well, the limited follow-up periods do not necessarily detect desistance where the ex-offenders may have committed new offences outside the short time frame studied.

Effectiveness could also be measured by the extent to which the sentence addressed the individual's criminogenic needs. The term 'needs' here refers to those characteristics and problems that are amenable to treatment and, if addressed, will reduce the individual's likelihood of re-offending. For men, common criminogenic needs include drug/alcohol problems, underemployment and a lack of stable housing. For female offenders, needs may include a history of trauma, fractured family ties and sexual victimisation. Thus, a broader approach to effectiveness would consider how sentences foster improvements for offenders in such life areas as health, employment and family and social networks (Villettaz et al. 2015). Another definition of effectiveness would consider how well different sentences compensate victims or society in general (Mann and Bermingham 2020). Unfortunately, studies provide little information on this version of effectiveness. The emphasis in the effectiveness literature has long been upon re-offending rates over relatively short periods of time, rather than these other, broader conceptions.

#### ***Thinking about Risk***

The discussion about the effectiveness of sentencing alternatives (at least in terms of its meaning for reductions in re-offending) confuses different concepts. References to repeat offenders as endangering public safety, for instance, suggest the concern is more specifically about repeat

offenders who commit serious or violent crimes. Yet many such offenders commit only less serious crimes. Theft convictions, for example, are a common predictor of re-offending. Even when sophisticated risk assessment tools, such as the Offender Group Reconviction Scale (OSGR)<sup>12</sup> used in England and Wales, predict an individual to be at high risk, this result does not necessarily mean a likelihood of committing a serious or violent crime. Instead, a strong likelihood is predicting any re-offending, including quite minor offences.

Consequently, reform proposals should reflect these issues. Repeat offenders may be taxing on criminal justice resources as they cycle in and out of the justice system. But they may distract attention from the small group of individuals who do pose a serious and violent threat to society. The recent White Paper recognises the difference:

*There are some offenders that we consider to be ‘prolific’. These offenders commit a large number of generally low-level crimes, and often fail to respond to existing interventions by the court. For these prolific offenders we will continue to consider whether there are innovative ways in which we could tackle their persistent offending.* (Ministry of Justice 2020b, p. 34)

The White Paper provides little detail on these innovations but the implication remains that the current sentencing system which cycles these ‘prolific’, yet non-serious, offenders in and out of prison is not ideal. Increasing the number or duration of custodial sentences will contribute to the already burgeoning prisons. ‘Smarter’ sentencing will entail amending current alternatives or creating new penalties that help transform the lives of repeat offenders.

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<sup>12</sup> The Offender Group Reconviction Scale (OSGR) is a risk assessment tool used by probation and prison services across England and Wales. Initially deployed in 1996, the OSGR was designed to predict the probability of re-offending by adults discharged from custody or given non-custodial sentences (Howard 2018). OSGR scores are based on age, gender, offence type and criminal history. Higher scores indicate a greater likelihood of re-offending. The OSGR is designed to predict the risk of committing any crime, regardless of severity. Hence, a high score is not equivalent to predicting the offender will commit a serious or violent crime.

## 4. RE-OFFENDING RATES AND THE PRINCIPAL SENTENCES

The Ministry of Justice regularly publishes re-offending rates and recent statistics for England and Wales regarding annual average proven re-offending statistics for adults by sentence type are summarised in Table 1 (Ministry of Justice 2020c). This table notes the percentage of recidivists in each category, the average number of offences committed per re-offender and the average risk score for the offenders who previously received the disposal.

**Table 1: Adult Known Re-offending Rates by Sentence Type (April 2017 – March 2018)**

Sentence Type	Percentage of Offenders	Average number of new offences per recidivist	Average risk score
All custodial sentences	48%	5.3	51.1
Less than or equal to 6 months	66%	6.1	59.0
More than 6 months to less than 12 months	52%	5.4	52.6
12 months to less than 2 years	37%	3.9	46.5
2 years to less than 4 years	29%	3.2	45.6
4 to 10 years	19%	2.8	37.0
More than 10 years	8%	2.0	21.6
Suspended sentence order with requirements	30%	3.7	35.4
Suspended sentence order without requirements	48%	5.3	46.7
Community order	33%	4.0	35.3

Source: Ministry of Justice (2020c, Tables C1a and C2a); percentages rounded.

Table 1 shows the percentage of offenders within each sentence group who re-offended (i.e. were convicted or received a caution for a new offence) during a one-year period.<sup>13</sup> The overall re-offending rate for offenders sentenced to immediate custody was 48%. Re-offending rates varied significantly across different sentence lengths with the highest re-offending rate (66%) emerging for

<sup>13</sup> The year began for those receiving a custodial sentence when they were released from prison and for the others on the date of their court conviction.



those who had served the shortest sentences. The proportion of offenders re-offending then declined steadily for longer sentences, down to 8% for custodial sentences of over 10 years.

### ***Re-offending Rates Higher for Custody than Community-based Sentences***

Offenders who had served a period in custody offended at a higher rate (approximately 48%) than those sentenced to community orders (about 33%) or SSOs with requirements (30%). These latter community-based orders are more likely to be considered appropriate alternatives to short prison sentences. Re-offending occurred less often for ex-offenders who had received community orders or SSOs than for custodial sentences of less than six months (about 66%) and of six to 12 months (about 52%).

Table 1 also shows the average number of offences per re-offender in each group. For custodial sentences, the average number of new offences was highest for the shortest terms of imprisonment and then declined as the sentence length increased. Comparing averages across sentence type, a similar pattern to the re-offending rates emerged: custodial sentences were associated with a higher number of new offences than community orders and SSOs.

Table 1 summarises the average risk score for each sentence group as a whole from the OGRS. The average risk scores are consistent with the patterns in the first two columns. Those released from longer custodial sentences were evaluated at lower risk by the OGRS. This may be explained by the fact the risk assessment tool places great weight on offender age as a risk factor. Offenders who served custodial sentences were scored, on average, higher risk than offenders sentenced to community-based penalties; offenders with SSOs or community orders were assessed on average as lower risk than the custody group.

However, there is a clear contrast between SSOs with and without requirements. Re-offending rates of offenders who receive an SSO with requirements were higher than those whose SSO had no requirements attached. The latter perform much more similarly to the custodial sentence group than they do to the other community-based sentence cohorts. This group has a higher risk score and, in terms of the proportion who re-offend and the average number of offences per re-offender, it performs almost identically to the overall custody cohort. The higher risk score of offenders who receive an SSO without requirements suggests that there is something fundamentally different about this group of offenders to those who receive the other community-based sentences.<sup>14</sup>

Some insight into the relationship between re-offending and sentence type emerges from studies with prisoners. Research conducted by Lievesley et al. (2018) involving repeat offenders in an English prison provides some context on those cycling in and out of short custodial sentences. These individuals tended to describe their prison terms as exemplifying their way of life in which re-offending was assumed to be inevitable. These prisoners did not see their time in custody as rehabilitative. Instead, they considered each short sentence as worsening their problems on the

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<sup>14</sup> In 2019, 18% of offenders who received an SSO did not have any requirements attached to the order (Ministry of Justice (2020d, Probation 2019, Table A4.1)).

outside. Criminal behaviour became their default way of meeting their needs for housing, food and drugs.

### ***Variations in Re-offending Rates***

The statistics in Table 1 do not establish whether the nature of sentence (e.g. custodial versus community-based) or the length of custody are *causes* of re-offending. Rather, the form and length of sentence may just be *correlated* (i.e. associated) with re-offending. The offenders in the multiple sentencing groups vary in risk-relevant ways, such as the types of offences committed and in their personal characteristics. Individuals sentenced to imprisonment may differ in many ways from those given community orders or SSOs – and these differences may explain the variable re-offending rates.<sup>15</sup> The lower average risk scores listed in Table 1 for community orders or SSOs compared to custodial sentences are evidence of such risk-relevant differences.

Limited evidence is available on how re-offending varies according to the type of offence, or gender and ethnicity of the offender (Ministry of Justice 2020c). For the year ending March 2018, female offenders had significantly lower re-offending rates than males. Females re-offended at a rate of 23% compared to males at 30%. Comparisons based on ethnicity categorisations revealed the following re-offending rates: White offenders (30%), Black offenders (31%), Asian offenders (24%) and other ethnicities (20%). Re-offending rates by offence type are presented in Table 2.

**Table 2: Adult Re-offending by Offence Type (April 2017 – March 2018)**

Offence Category	Re-offending rate
Sexual	14%
Fraud	17%
Drugs	25%
Violence against the person	26%
Criminal damage and arson	26%
Robbery	32%
Possession of a weapon	33%
Public order	39%
Theft	52%

Source: Ministry of Justice (2020c, Table A4a); percentages rounded

As noted earlier, offenders who received short custodial sentences were often convicted of low-level offences such as public order offences and theft. Table 2 thus provides some explanation for this finding: less serious offences (such as theft) are associated with higher re-offending rates. In

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<sup>15</sup> See findings and discussion in Villettaz et al. (2015).

contrast, the more serious types of offence that would justify lengthier custodial terms (such as sexual offences and violence against the person) are among the lower re-offending rates.

## 5. COMPARING RE-OFFENDING RATES WITH MATCHED SAMPLES

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While comparing re-offending rates for different sentence types (see Table 1) yields general information on the patterns of repeat offending, such comparisons are unable to estimate the relative *effectiveness* of different forms of the penalty (e.g. custody or community order). As noted, the groups in each sentence type may vary in many respects. Thus, different re-offending rates across types of sentencing outcome may simply reflect differences in offences and offenders. For example, offenders sentenced to immediate custody are likely to have more serious criminal histories.<sup>16</sup> This would make them a higher risk to re-offend even before they begin their sentence. For this reason, it is necessary to control for factors such as the previous convictions.

To address this problem, researchers created comparable samples in order to control for any pre-existing differences between offenders. Samples of individuals are matched on multiple offender and offence characteristics. This method increases the confidence that different types of sentences are related to re-offending. The trade-off with using matched samples is that not all offenders can be appropriately matched and some individuals are lost in the comparisons. Hence, the matched sample design is unable to give full re-offending rates because the comparisons between sentence types only include those offenders who could be matched. Nonetheless, the results provide further insight into how sentence types may differ with respect to re-offending outcomes for similar offenders.

### ***Comparing Short and Intermediate Custodial Sentences with Community Sanctions***

The Ministry of Justice has published several comprehensive analyses using this superior methodology. In a study of matched samples in England and Wales for 2010 (Ministry of Justice 2013),<sup>17</sup> researchers matched individuals on age, gender, offence type, offence seriousness and the number of prior offences. This study compared various sentencing types in pairs (i.e. each pair was matched on those characteristics). The differences between re-offending rates in each pair are shown in Table 3 (the group in the left-hand column of the table has a higher re-offending rate than the comparator on the right).

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<sup>16</sup> A provision in the Sentencing Code (replicating an earlier provision in the Criminal Justice Act 2003) requires courts to take prior convictions into account at sentencing unless it would be unreasonable to do so.

<sup>17</sup> This study defined re-offending as any court conviction, caution, reprimand, or warning.

Table 3: Re-offending Comparisons by Type of Sentence (2010)

Matched group pairs		Difference	
Custody < 12 months	vs	Custody from 1-4 years	+ 12%
Custody < 12 months	vs	Community orders	+ 6%
Custody < 12 months	vs	Suspended sentence orders	+ 9%
Custody 1 – 6 months	vs	Custody from 6-12 months	+ 5%
Community orders	vs	Suspended sentence orders	+ 3%

Source: Ministry of Justice (2013); percentages rounded.

Table 3 reveals that short custodial sentences (< 12 months) were associated with higher re-offending rates, whether compared to intermediate custodial sentences of one to four years or to either a community order or SSO. Shorter custodial sentences (one to six months) had a higher re-offending rate than a custodial sentence of six to 12 months. These results suggest that a short term of imprisonment is the least effective sentence in reducing re-offending.

One possible explanation for these trends is that short prison sentences disrupt offenders' lives without allowing sufficient time for the prisoner to gain any rehabilitative benefits that custody might offer (such as rehabilitative programmes). Table 3 shows that both community orders and SSOs are associated with lower re-offending rates than short custodial sentences and that SSOs were more effective in terms of a lower likelihood of re-offending than community orders.

These findings confirm earlier research outcomes.<sup>18</sup> Mews et al. (2015) compared re-offending rates for the principal sanctions and found that short custodial sentences (< 12 months) were consistently associated with higher rates of re-offending than SSOs or community orders. These researchers had controlled for differences between offenders sentenced to the various sanctions.<sup>19</sup>

### ***Offender Characteristics and Variations by Offence Type***

Researchers have also used matched samples analysis to determine whether the differences in re-offending rates based on sentence type varied by age, ethnicity, gender, criminal history and mental health status (Hillier and Mews 2018). Their focus was upon short custodial sentences (12 months or less) compared to community orders and SSOs. In this study, short prison sentences were associated with higher rates of re-offending than community orders or SSOs (Hillier and Mews 2018). However, the relationship varied depending on the offender's criminal history. The difference in re-offending for first offenders was not statistically significant. But for those with many prior

<sup>18</sup> The advantage of a period of community supervision with requirements over imprisonment is a robust finding which has been noted since the 1960s (see Hammond 1964; Brody 1976, pp. 27-29.)

<sup>19</sup> This was accomplished by applying 'propensity score matching', described by the researchers as 'a well-tested approach to looking at impact' of different sanctions (Mews et al. 2015, p. 1).

offences, there was a significant decrease in re-offending rates for those given community orders or SSOs compared to short custodial sentences.

Compared to short custodial sentences, community orders or SSOs were more significantly related to lower re-offending rates for those who were younger (age 18-20) or older (over age 50). Community orders and SSOs were also related to reduced re-offending for those with severe mental health issues, after controlling for offending history. No differences were observed based on gender or ethnicity, after controlling for offending history, in re-offending rates between short custodial sentences versus the other orders. This means that reductions in re-offending for community orders and SSOs compared to short prison sentences were seen for those with similar criminal histories, regardless of gender or ethnicity.

### ***Comparing Short Custodial Sentences Plus Supervision with Community Sanctions***

The matched sample comparisons relate to a time when short custodial sentences did not include any supervision in the community upon release. The Offender Rehabilitation Act 2014 introduced a requirement for community supervision upon release with custodial sentences of less than twelve months. Thus, it is possible that the supervisory requirement may affect re-offending rates for short custodial sentences. More recently, researchers have investigated re-offending patterns with a new cohort of adult offenders whose short custodial sentences included post-release supervision (Eaton and Mews 2019). These researchers created comparable groups by matching on 150 factors. Results are shown in Table 4 with the disposal in the left-hand column representing the alternative with a higher re-offending rate.

**Table 4: Re-offending Comparisons by Sample Type (2016)**

Matched group pairs		Difference	
<b>Custody &lt; 12 months</b>	vs	Community orders	+3.7%
<b>Custody &lt; 12 months</b>	vs	Suspended sentence orders	+4.1%
<b>Community orders</b>	vs	Suspended sentence orders	+ 4.2%

Source: Eaton and Mews (2019, p. 16)

The results are consistent with the earlier studies. Short custodial sentences, even with supervision upon release, were associated with higher re-offending rates (about 4% higher) than community orders or SSOs. Although not shown in the table, these results occurred whether the custodial sentences were less than three, six, or 12 months (Eaton and Mews 2019). In this new study, community orders were associated with a higher re-offending rate than SSOs.

It is not possible to determine whether the introduction of the supervision requirement for short custodial sentences had any impact on re-offending rates by comparing results between Table 3 (pre-supervision requirement) and Table 4 (post-supervision requirement). Between the study dates, the Ministry of Justice changed the data used to compile re-offending statistics and various

other reforms in managing offenders were implemented. This may have affected the results. Amidst these various adjustments, it was not possible to isolate the effect of the introduction of a supervision component.

### ***Similar Findings from Other Countries***

For comparison purposes, it is of interest to look at the relative re-offending rates in a related jurisdiction. In Scotland, the re-offending rate for those released after a custodial sentence was about 41% (Justice Directorate 2020). In contrast, the re-offending rate for what are referred to in Scotland as community payback orders (a form of community order with requirements attached) was lower -- at about 29%. As with England and Wales, the longer the prison sentence, the less likely the individuals were to re-offend. Scottish officials offer an explanation: 'Short custodial sentences have higher reconvictions than longer sentences. This is largely because offenders who are given shorter sentences commit relatively less serious crimes such as shoplifting and tend to commit more of these crimes than those committing more serious crimes and so they are reconvicted more often' (Justice Directorate 2020, p. 6).

Overall, these various studies in England and Wales and in Scotland that reveal higher re-offending rates for short term custody over community sanctions are consistent with research in other parts of the world (Villettaz et al. 2015; Zara and Farrington 2016). For instance, Dutch researchers also recorded higher re-offending rates for custodial sentences than suspended sentences (Aarten et al. 2015; see also Mears and Cochran 2018; Lulham et al. 2009).

## 6. RESEARCH PRIORITIES

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Reducing re-offending is only one of five primary sentencing objectives in England and Wales. Nevertheless, it is vital that sentencing options contribute to reducing offending in the most cost-effective way. The research consensus suggests that short term prison sentences are not a cost-effective means of reducing re-offending. Beyond this conclusion, several areas of interest remain to be addressed.

First, when imposing community orders or SSOs, sentencers may select from a range of requirements. Yet little is known about the relative effectiveness of different requirements or the ways that different requirements interact. If researchers could establish which specific requirements, or combinations of requirements, contributed most to reducing re-offending, this information would be of great use to sentencers. It would also be helpful if researchers could establish why offenders sentenced to an SSO without requirements re-offend at a rate that is very similar to those who receive an immediate custodial sentence (and much more frequently than those receiving other community-based sentences). This may be caused by the types of offender

who receive this particular disposal or by an inherent flaw in this type of sentence, or some other reason.

Second, more research is needed upon the effectiveness of the SSO. The volume of these orders has increased dramatically over the past 15 years.<sup>20</sup> Again, research to date has demonstrated the cost-effective nature of this form of custodial sentence, relative to immediate terms of custody. What is needed now is a better understanding of the factors explaining the relative success of SSOs and the optimal periods during which a sentence is suspended. Finally, moving beyond the question of relative effectiveness in reducing offending, it would be worth exploring public reaction to the use of SSOs.<sup>21</sup>

Third, many other jurisdictions employ intensive community-based orders which are designed to be as punitive as a short term of imprisonment. The recent White Paper proposes to introduce such a high-end supplement to improve the scope of community orders.<sup>22</sup> The proposal is similar to sanctions in other jurisdictions, such as the Intensive Correction Order and the Community Corrections Order in Australia or the Conditional Sentence of Imprisonment in Canada (see Maxwell (2017) and Roberts and Cole (2020)). These sanctions permit the offender to reside in the community, but only subject to very restrictive conditions, including a curfew and possibly electronic monitoring. Breach of these conditions should result in committal to custody. Both sentences were created to offer courts a plausible alternative to imposing a relatively short term of institutional imprisonment.

The research on these sanctions is limited, but generally finds that such intensive orders perform better than prison in reducing re-offending. For example, Wang and Poynton (2017) report a significantly greater reduction in re-offending for offenders sentenced to an Intensive Correction Order compared with offenders who received a prison sentence of up to 24 months.

Finally, Sentencing Commissions and Councils in other countries have published comprehensive reviews of the effectiveness of the sanctions in their jurisdiction (e.g. Gelb et al. 2019). A similar exercise is long overdue in England and Wales. While the Ministry of Justice has published a number of reports examining select disposals, a more comprehensive, comparative exercise, in conjunction with the Sentencing Council would provide courts with useful information on the crime preventive effectiveness of the sanctions they deploy.

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20 The increase in the use of SSOs since 2005 represents the most dramatic shift in sentencing practices in England and Wales in decades (for discussion, see Irwin-Rogers and Roberts, 2019).

21 Research could explore the extent to which the public is aware of the nature of SSOs and whether there is public support for, or opposition to, the expanded use of this form of custodial sentence.

22 The Centre for Social Justice recently proposed a new custodial sentence called the Intensive Control and Rehabilitation Order (ICRO). This sanction would be served wholly in the community with the offender being subject to electronic monitoring, curfew monitoring and regular periodic reviews by a court; See <https://www.centreforsocialjustice.org.uk/library/sentencing-in-the-dock-the-case-for-a-new-sentence-in-the-criminal-courts-of-england-and-wales>.

## 7. SUMMARY AND CONCLUSION

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Different types of sentences (e.g. custodial or community-based) are associated with different rates of re-offending. Longer custodial terms are associated with progressively lower re-offending rates. This is likely to be explained in part by the ageing of the longer serving prisoners. Short term custody (with or without supervision on release) is linked to higher re-offending rates than either community orders or SSOs. The studies were not able to show whether the introduction of supervision to offenders released after custodial sentences of less than twelve months was effective or not because differences in how data were collected preclude such comparisons. In turn, community orders with requirements were associated with higher re-offending rates than those receiving SSOs. Overall, these findings with respect to re-offending with different sentence types were consistent across gender and ethnicity. Ultimately, this research suggests that the selection of a sentence does make a difference with respect to the likelihood of re-offending.



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## Firearms – Importation

### **Improper importation of goods**

Customs and Excise Management Act 1979 (section 50(3), (4) and (5A)(a))

### **Fraudulent evasion of prohibition / restriction**

Customs and Excise Management Act 1979 (section 170(1)(b), (2), (3) and (4A)(a))

Triable either way

Maximum: 7 years unless committed in Great Britain in connection with a prohibition or restriction on the importation or exportation of any weapon or ammunition that is of a kind mentioned in section 5(1)(a), (ab), (aba), (ac), (ad), (ae), (af) or (c) or (1A)(a) of the Firearms Act 1968 in which case the maximum is life imprisonment

Offence range: x –x years' custody

Guideline users should be aware that the [Equal Treatment Bench Book](#) covers important aspects of fair treatment and disparity of outcomes for different groups in the criminal justice system. It provides guidance which sentencers are encouraged to take into account wherever applicable, to ensure that there is fairness for all involved in court proceedings.

## Step 1 – Determining the offence category

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

### Culpability – Type of weapon

Use the table below to identify an initial culpability category based on the **type of weapon** only. This assessment focuses on the nature of the weapon itself only, not whether the weapon was loaded or in working order.

Courts should take care to ensure the categorisation is appropriate for the specific weapon. Where the weapon or ammunition does not fall squarely in one category, the court may need to adjust the starting point in step 2.

References to weapon below include a component part of such a weapon.

#### Type 1

Weapon that is designed to be capable of killing two or more people at the same time or in rapid succession

- This would **normally** include a weapon prohibited under the following sections of the Firearms Act 1968:
  - section 5(1)(a)
  - section 5(1)(ab)
  - section 5(1)(aba)
  - section 5(1)(ac)
  - section 5(1)(ad)
  - section 5(1)(ae)
  - section 5(1A)(c)

#### Type 2

All other weapons falling between Type 1 and Type 3

- This would **normally** include a weapon requiring certification or prohibited under the following sections of the Firearms Act 1968:
  - section 1
  - section 5(1)(af)

Ammunition (where not at Type 3)

- This would **normally** include ammunition under requiring certification or prohibited under the following sections of the Firearms Act 1968:
  - section 1,
  - section 5(1)(c),
  - 5(1A)(b) and (d)-(g)

#### Type 3

Weapon that is not designed to be lethal

- This would **normally** include a weapon under section 5(1)(b) or a stun gun under section 5(1A)(a)

Very small quantity of ammunition

**Culpability – other culpability factors**

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

**High culpability:**

- Leading role where offending is part of a group activity
- Significant planning, including but not limited to significant steps to evade detection
- Abuse of position of trust or responsibility, for example registered firearms dealer, customs official
- Expectation of substantial financial or other advantage
- Involves others through coercion, intimidation or exploitation

**Medium culpability:**

- Significant role where offending is part of a group activity
- Some degree of planning, including but not limited to some steps to evade detection
- Expectation of significant financial or other advantage
- Other cases falling between culpability A and 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

**Lower culpability:**

- Lesser role where offending is part of a group activity, including but not limited to performing a limited function under direction
- Involved through coercion, intimidation or exploitation
- Little or no planning
- Expectation of limited, if any, financial or other advantage

Other culpability factors	Type of weapon		
	1	2	3
<b>High</b>	Culpability category A	Culpability category B	Culpability category C
<b>Medium</b>	Culpability category B	Culpability category C	Culpability category C
<b>Lower</b>	Culpability category C	Culpability category D	Culpability category D

**Harm**

Harm is assessed by reference to the **scale** and **nature of the importation** regardless of the offender's role and regardless of whether the importation was intercepted.

**Category 1**

- Large-scale commercial enterprise – indicators may include:
  - Large number of firearms/ ammunition involved
  - Operation over significant time period
  - Close connection to organised criminal group(s)

**Category 2**

- Medium-scale enterprise and/or some degree of sophistication, including cases falling between category 1 and category 3 because:
  - Factors in both 1 and 3 are present which balance each other out; and/or
  - The harm falls between the factors as described in 1 and 3

**Category 3**

- Smaller-scale and/or unsophisticated enterprise – indicators may include:
  - Limited number of firearms/ ammunition involved
  - Minimal/no connection to organised criminal group(s)

## Step 2 – Starting point and category range

Having determined the category at step 1, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions.

Table 1 should be used if the offence is subject to a maximum life sentence  
Table 2 should be used if the offence is subject to a maximum 7 year sentence

**TABLE 1: Offences subject to the statutory maximum of a life sentence (offence relates to weapon or ammunition that is of a kind mentioned in Section 5(1)(a), (ab), (aba), (ac), (ad), (ae), (af), (c), section 5(1A)(a) Firearms Act 1968)**

Harm	Culpability			
	A	B	C	D
<b>Cat 1</b>	<b>Starting point</b> 20 years' custody <b>Category range</b> 16 – 28 years' custody	<b>Starting point</b> 14 years' custody <b>Category range</b> 10 – 17 years' custody	<b>Starting point</b> 10 years' custody <b>Category range</b> 8 – 12 years' custody	<b>Starting point</b> 6 years' custody <b>Category range</b> 4 – 8 years' custody
<b>Cat 2</b>	<b>Starting point</b> 14 years' custody <b>Category range</b> 10 – 17 years' custody	<b>Starting point</b> 10 years' custody <b>Category range</b> 8 – 12 years' custody	<b>Starting point</b> 6 years' custody <b>Category range</b> 4 – 8 years' custody	<b>Starting point</b> 3 years' custody <b>Category range</b> 2 – 5 years' custody
<b>Cat 3</b>	<b>Starting point</b> 10 years' custody <b>Category range</b> 8 – 12 years' custody	<b>Starting point</b> 5 years' custody <b>Category range</b> 3 – 8 years' custody	<b>Starting point</b> 3 years' custody <b>Category range</b> 2 – 5 years' custody	<b>Starting point</b> 2 years' custody <b>Category range</b> 1 – 3 years' custody

**TABLE 2: Offences subject to the statutory maximum sentence of 7 years**

Harm	Culpability		
	A / B	C	D
<b>Category 1</b>	<b>Starting point</b> 5 years' custody <b>Category range</b> 4 – 7 years' custody	<b>Starting point</b> 3 years' custody <b>Category range</b> 2 – 5 years' custody	<b>Starting point</b> 2 years' custody <b>Category range</b> 1 – 3 years' custody
<b>Category 2</b>	<b>Starting point</b> 3 years' custody <b>Category range</b> 2 – 5 years' custody	<b>Starting point</b> 2 years' custody <b>Category range</b> 1 – 3 years' custody	<b>Starting point</b> 1 year's custody <b>Category range</b> High level community order – 2 years' custody
<b>Category 3</b>	<b>Starting point</b> 2 years' custody  <b>Category range</b> 1 – 3 years' custody	<b>Starting point</b> 1 year's custody  <b>Category range</b> High level community order – 2 years' custody	<b>Starting point</b> Low level community order  <b>Category range</b> Band A fine – High level community order

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

### Factors increasing seriousness

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

- A1. 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
- A2. Offence committed whilst on bail

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

- A3. Firearm under section 5(1)(a) (automatic weapon)
- A4. Compatible ammunition and/or silencer(s) imported with firearm (See step 6 on totality when sentencing for more than one offence)
- A5. Others put at risk of harm by method of importation
- A6. Offender intends firearm/ammunition to be used or is reckless as to whether it would be used (where not taken into account at step 1)
- A7. Use of business as a cover
- A8. Attempts to dispose of the firearm or other evidence
- A9. Commission of offence whilst under the influence of alcohol or drugs
- A10. Offender prohibited from possessing weapon or ammunition because of previous conviction (See step six on totality when sentencing for more than one offence)
- A11. Failure to comply with current court orders
- A12. Offence committed on licence or post sentence supervision

### Factors reducing seriousness or reflecting personal mitigation

- M1. No previous convictions **or** no relevant/recent convictions
- M2. Good character and/or exemplary conduct
- M3. Firearm incomplete or incapable of being discharged (including stun gun that is not charged and not held with a functioning charger)
- M4. Very small scale importation **and** very low risk of harm to others
- M5. Genuine belief that firearm/ammunition will not be used for criminal purpose
- M6. No knowledge or suspicion that importation was unlawful
- M7. Offender co-operated with investigation and/or made early admissions
- M8. Remorse
- M9. Serious medical condition requiring urgent, intensive or long-term treatment
- M10. Age and/or lack of maturity
- M11. Mental disorder or learning disability
- M12. Sole or primary carer for dependent relatives

### **Step 3 – Consider any factors which indicate a reduction for assistance to the prosecution**

The court should take into account [section 74 of the Sentencing Code](#) (reduction in sentence for assistance to prosecution) 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 4 – Reduction for guilty pleas**

The court should take account of any reduction for a guilty plea in accordance with [section 73 of the Sentencing Code](#) and the [Reduction in sentence for a guilty plea guideline](#).

### **Step 5 – 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 [Totality](#) guideline.

### **Step 6 – Ancillary orders**

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

- [Ancillary orders – Magistrates' Court](#)
- [Ancillary orders – Crown Court Compendium](#)

### **Forfeiture of firearms**

Where the offender is convicted of an offence contrary to section 170 of the Customs and Excise Management Act 1979 the court may consider making an order for forfeiture under section 170(6).

For any offence, the court may consider making an order for deprivation under [section 153 of the Sentencing Code](#) of any property used in the commission of the offence.

### **Serious Crime Prevention Order**

Where the offender is convicted of an offence contrary to section 170 Customs and Excise Management Act 1979, 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 7 – Reasons**

[Section 52 of the Sentencing Code](#) imposes a duty to give reasons for, and explain the effect of, the sentence.

### **Step 8 – 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 and [section 325 of the Sentencing Code](#).



Ref	Summary of main incident/offence	Additional offence	Sentence before GP discount	Final sentence combining all offences	Resentence for firearms offence(s) only	Comparable sentence for possession or transfer offence
1.	3 <b>handguns and ammunition</b> hidden in a TV and speaker which was due to be delivered to offender. In a search of his home police seized class B drugs with a street value of over £1,000, £600 in cash, a gas canister, two stun guns, pepper spray, six brass bullets, a cannabis grinder and a laptop. The guns had been adapted to fire live ammunition and the bullets found in his bedroom were identical to those seized from the delivery van	Possession guns and ammunition. Drugs offences	14 years	14 years 4 months  Various concurrent sentences including 15 months for drug offences. 4 months consecutive for FTS	Culp: Type 1 High = A Harm 2 A2 Table 1 SP 14 years	Transfer: A2 SP 14 years
2.	Offender arranged for an innocent driver to travel to Czech Republic and drive back to UK in van in <b>which semi-automatic firearm</b> and ammo had been professionally concealed. Sophisticated importation of very dangerous weapon and he was the principal.	Importation of 3 boxes of 50 rounds of live ammunition and silencer	22 years	22 years	Culp: Type 1 High = A Harm 1 or 2 A1/A2 Table 1 SP 14 years +	Transfer: A1/A2 SP 14+ years
3.	Stopped driving vehicle with <b>60 handguns</b> concealed inside. Acted as courier for money - knew what he was carrying	-	9 years	9 years	Culp: Type 1 Med = B Harm 1 B1 Table 1 SP 14 years	Transfer: B1 SP 14 years
4.	Importation of 34kg class A drugs and firearms ( <b>10 handguns, ammunition and silencers</b> ). Transferred guns and drugs from co-conspirator's car into his van. Offender was border force officer and had significant role and expected significant financial gain	Drugs Misconduct in public office	12 years	23 years	Culp: Type 1 High = A Harm 1 A1 Table 1 SP 20 years	Transfer: A1 SP 20 years

Ref	Summary of main incident/offence	Additional offence	Sentence before GP discount	Final sentence combining all offences	Resentence for firearms offence(s) only	Comparable sentence for possession or transfer offence
5.	Leading role in importation from Spain via UPS and supply of <b>46 live 9mm calibre cartridges, fully functioning firearm</b> and other ammunition.	-	14 years	12 years (5 counts in total including one to which min term applies)	Culp: Type 1 High = A Harm 2 A2 Table 1 SP 14 years	Transfer: A2 SP 14 years
6.	Ordered <b>components of a Glock pistol</b> from US on dark web for £900 in bit coins	-	15 months	10 months	Culp: Type 1 Med = B Harm 3 B3 Table 1: SP 5 years	Possession: Type 1 Med = B, Harm 2, B2 Table 1 SP 6 years
7.	Imported <b>automatic pistol and 50 rounds of ammunition</b> concealed in speaker cabinet. Package was intercepted and a dummy parcel sent in its place which he took delivery of. Was in possn of stun gun, cartridges and equipment for cloning credit cards, Had also enquired about buying machine pistol, ammo and sawn off shotgun		10 years	6 years 8 months	Culp: Type 1 High = A Harm 2 A2 Table 1 SP 14 years	Transfer: A2 SP 14 years
8.	Police raided a flat in London and found <b>11 Soviet era hand guns</b> , with serial numbers removed which had been re-barrelled, and silencers and ammo for them. Also <b>Kalashnikov machine gun</b> and large amount of cash. Co-accused convicted of sale or transfer offences. This offender had brought the weapons in from Lithuania in a minivan but not part of main conspiracy	-	10 years	10 years (co-accused sentenced to 18 years)	Culp: Type 1 Med = B Harm 1 B1 Table 1 SP 14 years	Transfer: B1 SP 14 years

Ref	Summary of main incident/offence	Additional offence	Sentence before GP discount	Final sentence combining all offences	Resentence for firearms offence(s) only	Comparable sentence for possession or transfer offence
9.	<b>3 semi-automatic and one fully automatic pistols</b> imported by post from Slovenia. He sourced and paid for the weapons, and had them sent to him and also obtained a package of 100 improvised projectiles which could have been used in these weapons. Played an essential part in a wider enterprise.	4 counts	10 years	10 years	Culp: Type 1 Med = B Harm 2 B2 Table 1 SP 10 years	Transfer: B2 SP 10 years
10.	Used dark web to source <b>Glock 19 handgun and ammunition</b> from US to be delivered to a former address hidden inside a music speaker. Police intercepted delivery and substituted dummy items. Took delivery and went to partner's home where there were young children.	Ammunition	14 years	10.5 years	Culp: Type 1 High = A Harm 2 or 3 A2/A3 Table 1 SP 10 years +	Transfer: A2/A3 SP 10 years +
11.	Imported <b>gun and 250 rounds of ammunition</b> by post, stated intention was to use it for target practice and for interest. Was a collector of weapons (knives and air weapons held legally). Used false name to buy gun. Was intercepted by FBI		4 years	30 months	Culp: Type 1? Med = B Harm 3 B3 Table 1: SP 5 years	Transfer: B3 SP 5 years Possession: Type 1? Med = B, Harm 2, B2 Table 1: SP 6 years
12.	Tried to import a Glock 19 handgun through dark web using crypto currency	-	4.5 years	3 years	Culp: Type 1 Med = B Harm 3 B3 Table 1: SP 5 years	Possession: Type 1 Med = B, Harm 1/2, B1/B2 Table 1: SP 6+ years

Ref	Summary of main incident/offence	Additional offence	Sentence before GP discount	Final sentence combining all offences	Resentence for firearms offence(s) only	Comparable sentence for possession or transfer offence
13.	Brought a <b>blank unloaded hand gun</b> into UK from Poland	Mention of pepper gas, blanks and fireworks	18 months	SSO 12 months	Culp: Type 3 Low = D Harm 3 D3 Table 1: 2 years Table 2: SP CO	Possession: Type 3 Med = B, Harm 2, B2 Table 1: SP 6 years Table 2: SP 1 year
14.	Driver of a van into UK stuffed with ammunition - to be sold, at great profit for use in criminal enterprises. Included <b>100 prohibited cartridges which would expand on impact</b> , with 270 further cartridges for use in rifles and/or hand guns. His fingerprints were on packaging of the prohibited ammunition. Assessed as between lesser and significant role	-	4.5 years	3 years	Culp: Type 2 Med/Low = C/D Harm 1 C1 or D1 Table 1 SP 6 years +	Transfer: B1/C1 SP 10+ years
15.	Tried to import a <b>stun gun/ torch</b> by ordering it online. It was intercepted by Customs before it was delivered		18 months?	SSO 1 year susp for 1 year 150 hours unpaid work	Culp: Type 3 Low = D Harm 3 D3 Table 2: SP CO	Possession: Type 3 Med/Low = C Harm 2/3, C2/C3 Table 2: SP fine/CO
16.	Very few details - ordered a <b>disguised stun gun</b> not realising that it was unlawful		?	CO 12 months with 120 hours unpaid work	Culp: Type 3 Low = D Harm 3 D3 Table 2: SP CO	Possession: Type 3 Med/Low = C Harm 3, C3 Table 2 SP fine
17.	Took delivery of 2 weapons one of which was a <b>disguised stun gun</b> . Had 5 CS cannisters - not clear if this is separate to the above	Possn of cannabis	3 years 6 months	2 years 4 months	Culp: Type 3 Low = D Harm 3 D3 Table 1: SP 2 years Table 2: SP CO	Possession: Type 3 Med/Low = C Harm 2, C2 Table 1: SP 5.5 years Table 2: SP CO

Ref	Summary of main incident/offence	Additional offence	Sentence before GP discount	Final sentence combining all offences	Resentence for firearms offence(s) only	Comparable sentence for possession or transfer offence
18.	Brought <b>3 stun guns disguised as torches</b> into UK from Slovakia where they are legal		SSO 18 months suspended 2 years	SSO 12 months susp for 2 years with unpaid work	Culp: Type 3 Low = D Harm 3 D3 Table 1: SP 2 year Table 2: SP CO	Possession: Type 3 Med/Low = C Harm 2, C2 Table 1: SP 5.5 years Table 2: SP CO
19.	Bought a baton, a butterfly knife <b>and CS gas</b> on holiday in Bulgaria and brought them back to UK	3 counts		SSO 6 months	Culp: Type 3 Low = D Harm 3 D3 Table 2: SP CO	Possession: Type 3 Med/Low = C Harm 2, C2 Table 2: SP CO
20.	Ordered <b>CS spray cannisters</b> online for delivery to his home. Claims he had been the subject of threats and needed them for protection		9 months	SSO 6 months	Culp: Type 3 Low = D Harm 3 D3 Table 2: SP CO	Possession: Type 3 Med/Low = C Harm 2, C2 Table 2: SP CO
21.	Very few facts - importation of <b>non-lethal weapons</b> as collector, no ammunition, no risk of harm. Failed to check whether they were legal		CO	CO	Culp: Type 3 Low = D Harm 3 D3 Table 2: SP CO	Possession: Type 3 Low = C Harm 3, C3 Table 2: SP fine
22.	Imported <b>stun gun</b> and knives for his collection via internet over a period of a year unaware that it was illegal. No criminal intent. Kept weapons secure. Cooperated with police	Possession and importation of knives	18 months	SSO 12 months	Culp: Type 3 Low = D Harm 3 D3 Table 2: SP CO	Possession: Type 3 Low = C Harm 3, C3 Table 2: SP fine
23.	Ordered a <b>stun gun capable of administering 9,500 volts</b> online at the request of a friend, not realising it was illegal. Dangerous weapon but intercepted before it reached him	-	18 months	SSO 12 months	Culp: Type 3 Low = D Harm 3 D3 Table 2: SP CO	Possession: Type 3 Med = B Harm 2, B2 Table 2: SP 1 year

Ref	Summary of main incident/offence	Additional offence	Sentence before GP discount	Final sentence combining all offences	Resentence for firearms offence(s) only	Comparable sentence for possession or transfer offence
24.	Very few details given - Importation of 2 <b>CS cannisters</b> , possession of a third and possession w/o cert of air weapon	Possession of air pistol w/o cert	SSO 9 months	SSO 6 months	Culp: Type 3 Low = D Harm 3 D3 <b>Table 2: SP CO</b>	Possession: Type 3 Med = B Harm 2, B2 Table 2: SP 1 year
25.	Ordered 2 <b>stun guns</b> on internet. Took delivery of one and the other was intercepted by customs. Also ordered knuckle dusters	Knuckle dusters	3 years 9 months (assumed)	2 years 6 months	Culp: Type 3 Med = C Harm 3 C3 <b>Table 2: SP 1 year</b>	Possession: Type 3 Med = B Harm 2, B2 <b>Table 2: SP 1 year</b>
26.	Importing prohibited <b>Walther PKK hand gun designed to fire blanks</b> , a pyrotechnic device and 50 blank rounds while on bail for other offences. Importation intercepted	Possession of Taser, baton, knuckle duster and cannabis		CO	Culp: Type 3 Med = C Harm 3 C3 Table 2 SP 1 year	Possession: Type 3 Med = B Harm 2, B2 Table 2: 1 year

## Consultation Stage Resource Assessment

### Firearms Importation Offences

#### Introduction

This document fulfils the Sentencing Council's statutory duty to produce a resource assessment which considers the likely effect of its guidelines on the resources required for the provision of prison places, probation and youth justice services.<sup>1</sup>

#### Rationale and objectives for new guideline

In December 2020, the Sentencing Council published the definitive Firearms offences guidelines, relating to firearms offences covered by the Firearms Act 1968. These included a guideline for the offences of transferring and manufacturing of firearms or ammunition.

No current guideline exists for offences relating to importing firearms or ammunition or fraudulent evasion of prohibition under the Customs and Excise Management Act 1979 (detailed below). The Council is consulting on a new draft sentencing guideline to cover both offences, for use in all courts in England and Wales.

The Council's aim in developing the guideline is to provide sentencers with a structured approach to sentencing these offences that will ensure that sentences are proportionate to the offence committed and in relation to other offences. It should also promote a consistent approach to sentencing.

#### Scope

As stipulated by section 127 of the Coroners and Justice Act 2009, this assessment considers the resource impact of the guideline on the prison service, probation service and youth justice services. Any resource impacts which may fall elsewhere are therefore not included in this assessment.

This resource assessment covers the following offences under the Customs and Excise Management Act 1979 (CEMA), which will be covered by a single guideline:

- Import prohibited weapons or ammunition with intent to evade a prohibition or restriction (section 50(3),(4), (5A)(a)).

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<sup>1</sup> Coroners and Justice Act 2009 section 127: [www.legislation.gov.uk/ukpga/2009/25/section/127](http://www.legislation.gov.uk/ukpga/2009/25/section/127)

- Fraudulent evasion of prohibition or restriction on prohibited weapon or ammunition (section 170(1)(b) and (3), 170(2),(3), and (4A)(a).

This guideline applies to sentencing adults only; it will not directly apply to the sentencing of children and young people.

## Current sentencing practice

To ensure that the objectives of the guidelines are realised, and to understand better the potential resource impacts of the guideline, the Council has carried out analytical and research work in support.

The intention is that the guideline will encourage consistency of sentencing and in the majority of cases will not change overall sentencing practice. In order to develop a guideline that maintains current practice, knowledge of recent sentencing was required.

Sources of evidence have included the analysis of transcripts of judges' sentencing remarks and sentencing data from the MoJ Court Proceedings Database.<sup>2</sup>

During the consultation stage, we intend to hold discussions with sentencers to invite feedback and gauge whether the new guideline would work as anticipated. This should provide some further understanding of the likely impact of the guideline on sentencing practice, and the subsequent effect on prison and probation resources.

Detailed sentencing statistics for the offences covered by the draft guideline have been published on the Sentencing Council website at the following link: <http://www.sentencingcouncil.org.uk/publications/?type=publications&s=&cat=statistical-bulletin&topic=&year>.

### **Import prohibited weapons or ammunition with intent to evade a prohibition or restriction (section 50(3),(4), (5A)(a))<sup>3</sup>**

Between 2015 and 2019,<sup>4</sup> around 60 offenders were sentenced for this offence. The most common outcome was a fine (42 per cent) and just under a quarter (24 per cent) were given a suspended sentence order. A further 16 per cent were given a

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<sup>2</sup> The Court Proceedings Database (CPD), maintained by the Ministry of Justice (MoJ), is the data source for these statistics. The data presented in this resource assessment only include cases where the specified offence was the principal offence committed. When a defendant has been found guilty of two or more offences this is the offence for which the heaviest penalty is imposed. Where the same disposal is imposed for two or more offences, the offence selected is the offence for which the statutory maximum penalty is the most severe. Although the offender will receive a sentence for each of the offences that they are convicted of, it is only the sentence for the principal offence that is presented here. The average custodial sentence lengths presented in this resource assessment are mean average custodial sentence length values for offenders sentenced to determinate custodial sentences, after any reduction for guilty plea. Further information about this sentencing data can be found in the accompanying statistical bulletin and tables published here: <http://www.sentencingcouncil.org.uk/publications/?s&cat=statistical-bulletin>

<sup>3</sup> Within the CPD data, it is not possible to identify the weapon present, therefore, care should be taken when interpreting these statistics as they may include cases in which the weapon present was not a firearm and as such may influence the volumes of offenders sentenced or the sentence given.

<sup>4</sup> Due to the small number of offenders sentenced for these offences, 5 years of data have been presented.



community order, 11 per cent were sentenced to immediate custody and 7 per cent were given a discharge.

For those that were sentenced to immediate custody between 2015 and 2019, the average (mean) custodial sentence length (ACSL) was 2 years 11 months.<sup>5</sup>

### **Fraudulent evasion of prohibition or restriction on prohibited weapon or ammunition (section 170(1)(b) and (3), 170(2),(3), and (4A)(a)<sup>3</sup>**

Between 2015 and 2019<sup>4</sup>, around 60 offenders were sentenced for this offence. Nearly half (48 per cent) were sentenced to immediate custody and 35 percent were given a suspended sentenced order. A further 10 per cent received a community order, 5 per cent received a fine and 2 per cent were given a discharge.

For those sentenced to immediate custody between 2015 and 2019, the ACSL was 6 years 9 months.<sup>5</sup>

## **Key assumptions**

To estimate the resource effect of a guideline, an assessment is required of how it will affect aggregate sentencing behaviour. This assessment is based on the objectives of the draft guideline and draws upon analytical and research work undertaken during guideline development. However, some assumptions must be made, in part because it is not possible precisely to foresee how sentencers' behaviour may be affected across the full range of sentencing scenarios. Any estimates of the impact of the draft guidelines are therefore subject to a large degree of uncertainty.

Historical data on changes in sentencing practice following the publication of guidelines can help inform these assumptions, but since each guideline is different, there is no strong evidence base on which to ground assumptions about behavioural change. The assumptions thus have to be based on careful analysis of how current sentencing practice corresponds to the guideline ranges presented in the proposed draft guideline, and an assessment of the effects of changes to the structure and wording of the guideline where a previous guideline existed.

The resource impact of the draft guideline is measured in terms of the change in sentencing practice that is expected to occur as a result of it. Any future changes in sentencing practice which are unrelated to the publication of the guideline are therefore not included in the estimates.

In developing sentence levels for the draft guideline, data on current sentence levels have been considered. Existing guidance and transcripts of judges' sentencing remarks have also been reviewed.

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<sup>5</sup> The statutory maximum sentence for this offence is 7 years' custody unless the offence relates to a weapon or ammunition that is of a kind mentioned in Section 5(1)(a), (ab), (aba), (ac), (ad), (ae), (af), (c), section 5(1A)(a) of the Firearms Act 1968 in which case the statutory maximum sentence is life imprisonment (more information about the weapons that fall into this category can be found here: <https://www.legislation.gov.uk/ukpga/1968/27/section/5>). It is not possible to distinguish the actual weapon used within our data and therefore we are unable to identify if any sentence has been incorrectly recorded as above the statutory maximum.

While data exists on the number of offenders and the sentences imposed, assumptions have been made about how current cases would be categorised across the levels of culpability and harm proposed in the new guideline, due to a lack of data available regarding the seriousness of current cases. As a consequence, it is difficult to ascertain how sentence levels may change under the new guideline.

It remains difficult to estimate with any precision the impact the guideline may have on prison and probation resources. To support the development of the guideline and mitigate the risk of the guideline having an unintended impact, discussions with sentencers will be undertaken during the consultation stage to provide more information on which to base the final resource assessment accompanying the definitive guideline.

## Resource impacts

This section should be read in conjunction with the guidelines available at: <https://www.sentencingcouncil.org.uk/>.

The draft guideline covers both offences of importation under section 50(3),(4),(5A)(a) and offences of fraudulent evasion under section 170(1)(b) and (3), 170(2),(3), and (4A)(a) of CEMA and has been produced with current sentencing practices in mind. Due to the similar nature of these offences and because they are covered by the same guideline, the resource impact has been assessed and presented for both section 50 and section 170 offences collectively.

It is expected that these offences will be sentenced in the same way under the draft guideline and that overall, the draft guideline will improve consistency of sentencing.

There is currently no guideline for these offences which are low in volume and the limited data available suggests that current sentencing practice varies. The draft guideline has four levels of culpability (this is assessed by considering culpability factors similar to those in the transfer and manufacture guideline in conjunction with the type of weapon or ammunition) and three levels of harm. There are two sentencing tables, with different sentencing ranges depending on the maximum sentence for the type of weapon or ammunition. For offences subject to the statutory maximum of life, the range is a high level community order to 28 years' custody. For offences subject to the statutory maximum sentence of 7 years, the range is a Band A fine to 7 years' custody.

The offences under section 50 and section 170 of the CEMA 1979 relate to more than firearms and ammunition and it is not possible to identify the type of weapon to which the offending relates within the limited data we have available; it is therefore possible that some of the sentences presented are for weapons other than firearms. However, analysis of transcripts of Crown Court judges' sentencing remarks<sup>6</sup> suggests that of those cases seen in the Crown Court, all related to firearms or ammunition (it is not possible to verify this for cases sentenced in the magistrates' court as no transcripts are available). During the same time period, most offenders

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<sup>6</sup> Twenty-six transcripts of Crown Court sentencing remarks from 2018 and 2019 were analysed to assess the impact this guideline may have on prison and probation services. Of these, 10 related to section 50 offences and 16 related to section 170 offences.

(84 per cent) sentenced for fraudulent evasion of prohibition or restriction on prohibited weapon or ammunition (section 170) were sentenced at the Crown Court, suggesting that it is likely that this is representative of the types of cases seen.

However, for offenders sentenced for importing prohibited weapons or ammunition with intent to evade a prohibition or restriction (section 50), most were sentenced at magistrates' courts (78 per cent), for which there are no sentencing transcripts available. As such, it is difficult to establish whether this offence generally involves firearms and ammunition or other types of weapons. It is therefore possible that the guideline may have a greater or lesser impact than expected because it is unclear how many offenders are sentenced for these offences specifically relating to firearms. However, it is anticipated that the draft guideline will enable more consistent sentencing of these offences.

Analysis of transcripts of Crown Court judges' sentencing remarks was conducted to assess how sentences might change under the new guideline. The analysis suggests that for the most serious offences (generally those sentenced to immediate custody), sentences under the new guideline will remain broadly similar to current sentencing practice. For less serious offences (typically involving non-lethal weapons) the analysis suggested that some offenders previously sentenced suspended sentence orders may receive community orders under the draft guideline but it is anticipated that this change would have minimal impact on prison and probation services.

Due to a lack of available data, the small number of offenders sentenced for this offence and the current varied sentencing practice, it is not possible to say whether the guideline for these offences will have an impact on prison and probation resources overall but it is anticipated that any impact would be small and sentencing will become more consistent following the introduction of the guideline.

Further work during the consultation should provide further evidence on which to base the final resource assessment.

## Risks

In attempting to estimate the likely resource impacts of this guideline, there are two main risks to consider:

### **Risk 1: The Council's assessment of current sentencing practice is inaccurate**

An important input into developing sentencing guidelines is an assessment of current sentencing practice. The Council uses this assessment as a basis to consider whether current sentencing levels are appropriate or whether any changes should be made. Inaccuracies in the Council's assessment could cause unintended changes in sentencing practice when the new guideline comes into effect.

This risk is mitigated by information that is gathered by the Council as part of the consultation phase. This includes interviews and discussions with sentencers, to test whether the guideline has the intended effect. However, there are limitations on the number of scenarios which can be explored, so the risk cannot be fully eliminated. The Council has also included a question in the consultation document, asking for

consultees' views on the potential impact of the proposals. This information will provide further information on which to base the final resource assessment.

**Risk 2: Sentencers do not interpret the new guideline as intended**

If sentencers do not interpret the guideline as intended, this could cause a change in the average severity of sentencing, with associated resource effects.

The Council takes a number of precautions in issuing a new guideline to try to ensure that sentencers interpret it as intended. Sentencing ranges are agreed on by considering sentencing data in conjunction with Council members' experience of sentencing. Transcripts of Crown Court sentencing remarks have also been studied to ensure that the guideline is developed with current sentencing practice in mind. Research carried out with sentencers should also enable issues with implementation to be identified and addressed prior to the publication of the definitive guideline.

Consultees can also feed back their views of the likely effect of the guideline, and whether this differs from the effects set out in the consultation stage resource assessment. The Council also uses data from the Ministry of Justice to monitor the effects of its guidelines to ensure any divergence from its aims is identified as quickly as possible.