

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

**17 November 2023**  
**SC(23)NOV02 – Immigration**  
**Stephen Leake**  
**Vicky Hunt**  
**vicky.hunt@sentencingcouncil.gov.uk**

## **1 ISSUE**

1.1 The Council is asked to consider a first draft of a guideline combining the offences of knowingly enters the UK without leave (s24(B1) Immigration Act 1971), and knowingly arrives in the UK without valid entry clearance (s24(D1) Immigration Act 1971).

## **2 RECOMMENDATION**

2.1 That the Council discuss and agree the content of the draft guideline.

## **3 CONSIDERATION**

3.1 The relevant legislation is set out below:

### **24.— Illegal entry and similar offences.**

(A1) A person who knowingly enters the United Kingdom in breach of a deportation order commits an offence.

(B1) A person who—

(a) requires leave to enter the United Kingdom under this Act, and

(b) knowingly enters the United Kingdom without such leave, commits an offence.

(C1) A person who—

(a) has only a limited leave to enter or remain in the United Kingdom, and

(b) knowingly remains beyond the time limited by the leave, commits an offence.

(D1) A person who—

(a) requires entry clearance under the immigration rules, and

(b) knowingly arrives in the United Kingdom without a valid entry clearance, commits an offence.

]1[

(F1) A person who commits an offence under any of subsections (A1) to (E1) is liable—

- (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding [the general limit in a magistrates' court]<sup>2</sup> or a fine (or both);
- (b) on summary conviction in Scotland, to imprisonment for a term not exceeding [the general limit in a magistrates' court]<sup>2</sup> or a fine not exceeding the statutory maximum (or both);
- (c) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum (or both);
- (d) on conviction on indictment—
  - (i) for an offence under subsection (A1), to imprisonment for a term not exceeding five years or a fine (or both);
  - (ii) for an offence under any of subsections (B1) to (E1), to imprisonment for a term not exceeding four years or a fine (or both).

### Background to the offences

3.2 Prior to the amendments made by the Nationality and Borders Act 2022 (NABA) the offence of knowingly entering the UK without leave was set out in section 24(1)(a) of the Immigration Act 1971.

3.3 "Leave" refers to permission to enter or remain in the UK – such leave may be limited in terms of duration, or indefinite. The concept of "entering the UK without leave" caused difficulties about precisely what "entering" means in the context of the Act. "Entry" is defined in section 11(1) of the 1971 Act as meaning disembarking and subsequently leaving the immigration control area. Where a person is detained and taken from the area, or granted immigration bail, they are not deemed to have entered the UK.

3.4 The offence of entering the UK without leave was no longer considered sufficient given the changes in the ways in which people have sought to come to the UK through irregular routes. NABA therefore created two new offences so that it encompasses arrival, as well as entry into the UK. This allows prosecutions of individuals who are intercepted in UK territorial seas and brought into the UK, who arrive in but don't technically "enter" the UK.

3.5 Prior to the changes, the penalty for entering the UK without leave was an unlimited fine and/or a maximum of 6 months' imprisonment. The Government's assessment was that this maximum term of imprisonment did not provide a sufficient deterrent to those seeking to enter the UK without leave and did not reflect the seriousness of the offence, in particular where there are factors such as where conduct endangers life. The two new offences were therefore given higher maximum sentences of 4 years' imprisonment.

### Draft Guideline

3.6 Due to the similarities between the offences of entry and arrival the proposed guideline combines the two. In drafting this guideline, and looking at the recent case law and transcripts available it is clear that small boat cases are currently the most common method of committing the offence. However, it must be remembered that this offence can also be committed in other ways such as offenders coming into the UK in the back of lorries, or by plane. The draft guideline seeks to cover all scenarios.

3.7 The full proposed guideline can be seen at **Annex A**, and a summary of relevant case law at **Annex B**.

### Culpability Factors

<b>CULPABILITY</b>	
A - High Culpability	<ul style="list-style-type: none"><li>• Significant role played (more than simply a passenger) [OR Exercised some control over means of entry (e.g. control of a vessel or vehicle).]</li><li>• Sophisticated nature of offence/ significant planning by the offender</li><li>• Has made previous attempts to unlawfully enter/ arrive in the UK including by use of a false document</li></ul>
B - Medium culpability	Other cases that fall between categories A and C because: <ul style="list-style-type: none"><li>• Factors are present in A and C which balance each other out and/or</li><li>• The offender's culpability falls between the factors as described in A and C</li></ul>
C - Lower culpability	<ul style="list-style-type: none"><li>• Genuinely intends to apply for asylum on grounds which are arguable</li><li>• Involved due to coercion or pressure</li></ul>

3.8 Many of the proposed factors in this draft come from the recent Court of Appeal case of [R v Aydin Ginar \[2023\] EWCA Crim 1121](#) which concerned the s24(D1) Immigration Act

1971 offence of arrival. In this case the Court was invited to provide guidance and identify factors which may be relevant in sentencing. All of the factors identified by the Court feature in this draft as well as some other proposed factors.

- Significant role played (more than simply a passenger)

3.9 The above factor is likely to be most relevant in small boat cases. It would be used in instances where the offender is seen to have piloted the boat (though not been charged with the facilitation offence). An alternative form of words for this factor could be 'exercised some control over the means of entry (e.g. control of a vessel or vehicle)'.

3.10 The factor could, however, be used in other instances for example where an offender makes the arrangements for a group of people, perhaps their family group, to travel in a small boat or back of a lorry but they are not organising the whole trip, i.e. they are not the facilitator.

3.11 Having read a number of transcripts it seems that piloting the boat for a period of time is a common feature. In some instances, offenders have stated that all those onboard the small boat were required to take it in turns to steer. In one transcript the Crown Court Judge specifically states that although the offender is seen to have piloted the boat, as he has not been charged with the facilitation offence, he is not going to take this as an aggravating factor.

**Question 1: Does the Council agree with the inclusion of the factor 'Significant role played (more than simply a passenger)' or 'Exercised some control over the means of entry (e.g. control of a vessel or vehicle)'?**

- Sophisticated nature of offence/ significant planning by the offender

3.12 This factor may be relevant to a number of different case types. For example in the transcript cases (**Annex B**), the case of Adel Kadir concerned an offender who flew to the UK from Doha. On arrival Mr Kadir claimed to have lost the identity documents that he had used to board the plane. He gave false details to the border guards, a false account and claimed political asylum.

3.13 The Council may, however consider that this ought to be a step 2 factor?

- **Question 2: Does the Council agree with the inclusion of the factor 'Sophisticated nature of offence/ significant planning by the offender' at Step 1?**

- Has made previous attempts to unlawfully enter/ arrive in the UK including by use of a false document

3.14 Many of the cases concern offenders who have made previous unlawful attempts to enter the UK, some under these provisions and some under the more serious offence of possession of a false identity document with improper intent (statutory maximum sentence of 10 years). Clearly previous relevant convictions will always be captured at step 2 but for this offence the repeated attempts to evade the border might warrant a greater increase in sentence that would be achieved by inclusion of this factor at step 1.

**Question 3: Does the Council agree with the inclusion of the factor ‘Has made previous attempts to unlawfully enter/ arrive in the UK including by use of a false document’?**

3.15 Further to the above, the Council might consider a further factor, ‘Previously deported, removed or extradited from the UK or deprived of UK citizenship’. This could either appear at step 1 or at step 2.

**Question 4: Does the Council want to include a further factor, ‘Previously deported, removed or extradited from the UK or deprived of UK citizenship’?**

- Genuinely intends to apply for asylum on grounds which are arguable

3.16 This factor was one that appears in the Court of Appeal guidance provided by R v Aydin Ginar. It is a consideration that frequently comes up in cases but for the most part Judges seem keen to make clear that it is for the Home Office rather than the court to make a determination about the validity of an asylum claim.

3.17 In some cases the factor comes up because the offender has already pursued an asylum claim that has been unsuccessful and so the Judge, without having to assess the situation themselves, can rely on that information in considering the likelihood of any further application being successful.

**Question 5: Does the Council agree with the inclusion of the factor ‘Genuinely intends to apply for asylum on grounds which are arguable’?**

- Involved due to coercion or pressure

3.18 As with the offence of facilitation there are likely to be cases where an offender is coerced into committing this offence. This might be in a modern slavery type case where the defence is not sufficiently made out.

**Question 6: Does the Council agree with the inclusion of the factor ‘Involved due to coercion or pressure’.**

Harm Factors

<b>HARM</b>	
Category 1	<ul style="list-style-type: none"> <li>• Means or route of entry/ arrival involved a high risk of serious injury or death</li> <li>• Seeking to enter/ arrive in order to engage in criminal activity</li> <li>• Exploited/ put pressure on others</li> <li>• Involved children or vulnerable adults in the offence</li> </ul>
Category 2	<ul style="list-style-type: none"> <li>• Means or route of entry/ arrival involved some risk of serious injury or death</li> </ul>
Category 3	<ul style="list-style-type: none"> <li>• All other cases</li> </ul>

- Means or route of entry/ arrival involved a high risk of serious injury or death (high harm)
- Means or route of entry/ arrival involved some risk of serious injury or death (medium harm)

3.19 The above two factors are replicated from the facilitation guideline and seem just as relevant here. Clearly in a facilitation case the offender is much more directly responsible for the potential injury or death of others. A passenger is indirectly responsible because their participation and funding encourages such practices to continue.

3.20 The difference in responsibility between a passenger and facilitator is reflected in the sentence levels which are far higher in the facilitation guideline.

**Question 7: Does the Council agree with the inclusion of these two factors concerning risk of serious injury or death?**

- Seeking to enter/ arrive in order to engage in criminal activity

3.21 This is a common feature in the cases and is also a factor proposed in the Court of Appeal case referred to above. In the Court of Appeal case this factor was included as a consideration of culpability. In this proposed guideline I have listed it under harm as it seems that the harm to society would be greater should the offender's intentions be to commit crime.

3.22 Also, without this factor the other harm factors seem to predominantly relate to small boat cases and so ones which involve travelling to the UK by plane, would almost always fall into category 3.

**Question 8: Does the Council agree with the inclusion of the harm factor 'Seeking to enter/ arrive in order to engage in criminal activity'.**

- Exploited/ put pressure on others
- Involved children or vulnerable adults in the offence

3.23 These last two factors are self-explanatory.

**Question 9: Does the Council agree with the inclusion of the harm factors 'exploited/ put pressure on others' and 'involved children or vulnerable adults in the offence'.**

#### Sentence Levels

3.24 The statistics can be seen below. The offences only came into force in June 2022 and we only have data up until December 2022 so the volumes, especially for the s24(B1) offence are currently very low.

Requires leave to enter the United Kingdom under this Act, and knowingly enters the United Kingdom without such leave, Immigration Act 1971 s24(B1)

Court	June-Dec 2022	
	Volume	Proportion
Magistrates' court*	4	100%
Crown Court	0	0%
<b>Total</b>	<b>4</b>	<b>100%</b>

\* NB During this time period the magistrates' court had a maximum penalty of 12 months available to them.

Sentence outcome	June-Dec 2022	
	Volume	Proportion
Absolute and conditional discharge	0	0%
Community sentence	0	0%
Fine	0	0%
Suspended sentence	1	25%
Immediate custody	3	75%
Otherwise dealt with	0	0%
<b>Total</b>	<b>4</b>	<b>100%</b>

Sentence length (months)	June-Dec 2022	
	Volume	Proportion
Less than 6 months	0	0%
6-12 months	3	100%
12-18 months	0	0%
18-24 months	0	0%
<b>Total</b>	<b>3</b>	<b>100%</b>

The average custodial sentence length (ACSL) has not been calculated as fewer than 5 offenders were sentenced to immediate custody for this offence.

Requires entry clearance under the immigration rules, and knowingly arrives in the United Kingdom without a valid entry clearance, Immigration Act 1971 s24(D1)

Court	June-Dec 2022	
	Volume	Proportion
Magistrates' court*	108	91%
Crown Court	11	9%
<b>Total</b>	<b>119</b>	<b>100%</b>

\* NB During this time period the magistrates' court had a maximum penalty of 12 months available to them.

Sentence outcome	June-Dec 2022	
	Volume	Proportion
Absolute and conditional discharge	0	0%
Community sentence	0	0%
Fine	0	0%
Suspended sentence	13	11%
Immediate custody	106	89%
Otherwise dealt with	0	0%
<b>Total</b>	<b>119</b>	<b>100%</b>

Average custodial sentence length (ACSL) (months)	June-Dec 2022
Mean	7.9
Median	8.0



Sentence length (months)	June-Dec 2022	
	Volume	Proportion
Less than 6 months	43	41%
6-12 months	60	57%
12-18 months	3	3%
18-24 months	0	0%
<b>Total</b>	<b>106</b>	<b>100%</b>

3.25 The proposed sentence levels in the table below are based upon the statistics, transcripts and Court of Appeal cases and aim to maintain sentencing practice, in so far as we can establish what sentencing practice is or has become since these offences came into effect.

3.26 The highest sentence included is 3 years' custody. The statistics do not include sentences higher than 2 years. However, the statistics only reflect final sentences and in many of those cases we would expect the offender to have pleaded guilty and so for the sentence to have been reduced accordingly. Of the cases that I have read the highest sentence (prior to reduction for guilty plea) was 2 years, but this is a very small number of cases.

3.27 In the Court of Appeal case the following guidance is set out with regard to sentence length:

Before the [NABA] amendments to which we have referred, the maximum penalty for the predecessor of that offence was six months' imprisonment. It is apparent that Parliament regarded that previous level of sentence as insufficient, both for the existing offence of entering without leave and for the new offence of arriving without a valid entry clearance. The four-year maximum is also longer than some other offences which may be committed in an immigration and asylum context.

It is however significantly shorter than the maximum sentence of 10 years' imprisonment for an offence of possessing a false identity document with intent, contrary to section 4 of the Identity Documents Act 2010. As counsel for the respondent pointed out, use of a false identity document will not ordinarily cease at the border but will facilitate life in this country thereafter. It will also tend to undermine the passport system generally. We therefore accept the submission of the respondent that the present offence is inherently less serious than an identity document offence of the kind for which this court in *R v Kolawole* [2004] EWCA Crim 3047 indicated as attracting a sentence in the range of 12 to 18 months, even on a guilty plea and even for a person of previous good character.

3.28 When the Council recently considered the guideline for use of a false identity document with intent the sentence for a Kolawole type case (C1- one or two false documents for own use; Document used to evade immigration controls) was a starting point of 2 years with a range of 18 months – 30 months.

**Question 10: Does the Council consider that a top sentence of 3 years is appropriate for this guideline?**

3.29 The Council will note that the table includes a community order within the lowest part of the range for C3. Whilst the available statistics do not show that any offender has received a community order it may be appropriate in the least serious cases. In addition, not all offenders who are sentenced for these offences will meet the conditions for immediate removal from the UK under the provisions of the Illegal Migration Act 2003.

**Question 11: Does the Council agree with the inclusion of a community sentence?**

Harm	Culpability		
	A	B	C
<b>Category 1</b>	<b>Starting Point</b> 2 years' custody <b>Category Range</b> 18 months - 3 years' custody	<b>Starting Point</b> 18 months custody <b>Category Range</b> 1-2 years custody	<b>Starting Point</b> 1 years' custody <b>Category Range</b> 8 – 18 months' custody
<b>Category 2</b>	<b>Starting Point</b> 18 months custody <b>Category Range</b> 1-2 years custody	<b>Starting Point</b> 1 years' custody <b>Category Range</b> 8 – 18 months' custody	<b>Starting Point</b> 8 months' custody <b>Category Range</b> 6 months' – 1 years' custody
<b>Category 3</b>	<b>Starting Point</b> 1 years' custody <b>Category Range</b> 8 – 18 months' custody	<b>Starting Point</b> 8 months' custody <b>Category Range</b> 6 months' – 1 years' custody	<b>Starting Point</b> 6 months' custody <b>Category Range</b> High level Community Order – 8 months' custody

**Question 12: Does the Council agree with the proposed sentence table?**

### Aggravating Factors

3.30 In addition to the relevant statutory aggravating factors the following other aggravating factor has been included:

- Previous history of failed applications for leave to enter/ remain in the UK or for asylum

3.31 The above factor is referenced in the case of R v Aydin Ginar. It was particularly pertinent to that case however so Council members may feel it does not need to be included in a standard list of aggravating factors.

**Question 13: Does the Council agree to the inclusion of the aggravating factor**

### Mitigating Factors

3.32 In many immigration cases there will be significant personal mitigation. In R v Aydin Ginar, the Court of Appeal stated that:

The circumstances which are relied upon as arguable grounds for claiming asylum, such as the offender seeking to escape from persecution and serious danger, are likely also to mitigate the offence of arriving in the United Kingdom without a valid entry clearance. We would add that some offenders may have been misled as to what would await them in this country if they paid large sums of money to the criminals who offered to arrange their transport. Some may have suffered injury or come close to drowning in crossing in a dangerously overcrowded vessel. It will be for the sentencer to evaluate what weight to give to circumstances of that nature in a particular case.

3.33 Does the Council want to list any of these possible avenues of personal mitigation or should these be left for the Court to decide on a case by case basis?

**Question 14: Does the Council want to add any further mitigating factors in addition to the standard ones that can be seen in Annex A?**

## **4 EQUALITIES**

4.1 Due to the low volumes for these offences, and the fact that the offences are relatively new, it is likely that, as with other offences within this project, the volumes will be too low to draw any robust conclusions. However, it is proposed that the office examines the

data for all of the NABA offences and brings any useful breakdowns to Council’s attention once all of the proposed guidelines have been considered.

## 5 IMPACT AND RISKS

5.1 We will consider the impact of the guidelines in the usual way through the resource assessment.

## 6 REMAINING GUIDELINES

6.1 In January of this year the Council agreed the scope of the immigration project which included the following guidelines:

Immigration Act 1971 S24A	Seek / Obtain Leave to Enter / Remain In UK by Deceptive Means
Immigration Act 1971 S25(1) And (6)	Do an act to Facilitate the commission of a breach of UK immigration law by a non-UK national.
Identity Documents Act 2010 S4	Possessing or controlling identity documents with intent
Identity Documents Act 2010 S6	Possessing or controlling a false or improperly obtained or another person's identity document
S24(A1) Immigration Act 1971	Breach of deportation order
S24(B1) Immigration Act 1971	Knowingly enters the UK without leave
S24(D1) Immigration Act 1971	Knowingly arrives in the UK without valid entry clearance
S24(C1) Immigration Act 1971	Overstayers
S24(E1) Immigration Act 1971	Knowingly arrives without an Electronic Travel Authorisation (ETA)

6.2 The Council has now seen a first draft of all of the guidelines listed above except for the last two (section 24(C1) and section 24(E1)).

6.3 Having spoken to the CPS about the offence of overstaying (s24(C1)), they inform me that there has been just one offence recorded as being charged and reaching the first hearing since the offence came into effect in June 2022. Prior to the amendments made by

NABA the offence of overstaying was a summary only offence (s24(1)(b)(i) Immigration Act 1971). In most cases offenders were administratively removed rather than prosecuted.

6.4 We therefore have no transcript or statistical data to base a guideline upon, and it appears as though, given the limited number of prosecutions to date, these offences are not likely to be heavily prosecuted. For these reasons the Council may want to reconsider whether we prepare a guideline for this offence?

**Question 15: Does the Council want to produce a guideline for the offence of Overstaying?**

6.5 The final offence listed above (knowingly arrives without an ETA) has not yet come into force. The Home Office indicate that the offence will come in at some stage but are reluctant to give a time frame. I have considered whether the offence could be covered by the s24(B1) and (D1) guideline however I think the offending behaviour is likely to be quite different.

6.6 The NABA amendments to the Immigration Act 1971 require individuals who do not need a visa, entry clearance or other specified immigration status to obtain permission to travel, in the form of an Electronic Travel Authorisation, in advance of their journey to the UK. During the passage of the Bill the Government said the following:

The UK government is committed to strengthening the security of the UK border by ensuring that everyone wishing to travel to the UK (except British and Irish citizens) has permission to do so in advance of travel. This clause will provide for the creation of an Electronic Travel Authorisation scheme to close the current gap in advance permissions and enhance the government's ability to screen people in advance of arrival and prevent the travel of those who pose a threat to the UK.

6.7 It seems that people who travel without an ETA are unlikely to receive sentences similar to those who commit the s24(B1) or (D1) offence, and the factors relevant to such an offence are also likely to be very different. For these reasons I do not propose incorporating this offence into the draft guideline. Instead, I invite the Council to reconsider including this offence within the scope of the project.

**Question 16: Does the Council want to produce a guideline for the offence of Knowingly Arrives without an ETA?**

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## **Knowingly enters the United Kingdom without leave**

## **Knowingly arrives in the United Kingdom without valid entry clearance**

**Immigration Act 1971 section 24(B1)  
Immigration Act 1971 section 24(D1)**

**Triable either way**

**Maximum: Four years' imprisonment**

**Offence range: High Level Community Order – 3 years' custody**

<b>STEP ONE</b> <b>Determining the offence category</b>
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<b>CULPABILITY</b>	
A - High Culpability	<ul style="list-style-type: none"> <li>• Significant role played (more than simply a passenger) [OR Exercised some control over means of entry (e.g. control of a vessel or vehicle).]</li> <li>• Sophisticated nature of offence/ significant planning by the offender</li> <li>• Has made previous attempts to unlawfully enter/ arrive in the UK including by use of a false document</li> </ul>
B - Medium culpability	<p>Other cases that fall between categories A and C because:</p> <ul style="list-style-type: none"> <li>• Factors are present in A and C which balance each other out and/or</li> <li>• The offender's culpability falls between the factors as described in A and C</li> </ul>
C - Lower culpability	<ul style="list-style-type: none"> <li>• Genuinely intends to apply for asylum on grounds which are arguable</li> <li>• Involved due to coercion or pressure</li> </ul>

<b>HARM</b>	
Category 1	<ul style="list-style-type: none"> <li>• Means or route of entry/ arrival involved a high risk of serious injury or death</li> <li>• Seeking to enter/ arrive in order to engage in criminal activity</li> <li>• Exploited/ put pressure on others</li> <li>• Involved children or vulnerable adults in the offence</li> </ul>
Category 2	<ul style="list-style-type: none"> <li>• Means or route of entry/ arrival involved some risk of serious injury or death</li> </ul>
Category 3	<ul style="list-style-type: none"> <li>• All other cases</li> </ul>



**STEP TWO****Starting point and category range**

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

Harm	Culpability		
	A	B	C
<b>Category 1</b>	<b>Starting Point</b> 2 years' custody <b>Category Range</b> 18 months - 3 years' custody	<b>Starting Point</b> 18 months custody <b>Category Range</b> 1-2 years custody	<b>Starting Point</b> 1 years' custody <b>Category Range</b> 8 -18 months' custody
<b>Category 2</b>	<b>Starting Point</b> 18 months custody <b>Category Range</b> 1-2 years custody	<b>Starting Point</b> 1 years' custody <b>Category Range</b> 8 -18 months' custody	<b>Starting Point</b> 8 months' custody <b>Category Range</b> 6 months' – 1 years' custody
<b>Category 3</b>	<b>Starting Point</b> 1 years' custody <b>Category Range</b> 8 -18 months' custody	<b>Starting Point</b> 8 months' custody <b>Category Range</b> 6 months' – 1 years' custody	<b>Starting Point</b> 6 months' custody <b>Category Range</b> High level Community Order – 8 months' custody

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 *Totality* guideline and step five of this guideline.

Below is a **non-exhaustive** list of additional elements providing the context of the offence and factors relating to the offender. Identify whether a combination of these or other relevant factors should result in any upward or downward adjustment from the sentence arrived at so far.

**Care should be taken to avoid double counting factors already taken into account in assessing culpability**

**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:*

- Previous history of failed applications for leave to enter/ remain in the UK or for asylum

**Factors reducing seriousness or reflecting personal mitigation**

- No recent or relevant convictions
- Good character and/or exemplary conduct
- Remorse
- Sole or primary carer for dependent relatives
- Age/lack of maturity
- Mental disorder or learning disability (where not taken into account at step 1)
- Physical disability or serious medical condition requiring urgent, intensive or long-term treatment
- Offender co-operated with investigation, made early admissions and/or voluntarily reported offending

**STEP THREE**

**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 FOUR**

**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 FIVE**

**Totality principle**

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

**STEP SIX**

**Ancillary orders**

In all cases, the court must consider whether to make a compensation order and/or other ancillary orders.

**STEP SEVEN**

**Reasons**

Section 52 of the Sentencing Code imposes a duty to give reasons for, and explain the effect of, the sentence.

**STEP EIGHT**

**Consideration for time spent on bail**

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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Case Details	Sentence	Guideline Category
<p>Mariglen Celaj</p> <p>Attempted to enter UK in small overcrowded boat crossing the Channel. Second time in UK without permission, and previously made an unsuccessful application for asylum so unlikely to have a legitimate claim.</p>	<p>Final sentence 12 months GP Reduction 1/3</p> <p><b>Sentence before reduction 18mths</b></p>	A1
<p>Ogert Cera</p> <p>Attempted to cross Channel on a RIB. Previously entered UK unlawfully in the back of a lorry. Previously worked in UK in a cannabis factory Currently subject to a deportation order. Previous unlawful entry</p>	<p>Final sentence 14 months GP Reduction 1/3</p> <p><b>Sentence before reduction 21mths</b></p>	A1
<p>Mohammed Nassar</p> <p>Not very clear but seems likely to be a small boat case. Offender was also in breach of a deportation order though that was not separately charged. Previous unlawful presence in UK and false asylum claim in a false name that was withdrawn</p>	<p>Final sentence 16 months GP Reduction 1/3</p> <p><b>Sentence before reduction 24mths</b></p>	A1/2
<p>Shkav Abdulla</p> <p>Attempted to enter UK in small overcrowded boat crossing the Channel. No previous attempts to enter UK, has made a claim for asylum that is yet to be adjudicated on. Was originally charged with facilitating but this was dropped- though there may be some evidence that he was more than a mere passenger?</p>	<p>Final sentence 8 months GP Reduction 1/3</p> <p><b>Sentence before reduction 12mths</b></p>	B1 (If there was any evidence that he was more than a mere passenger) or C1 if not
<p>Alfred Alla</p> <p>Unlawful Channel crossing in small boat. Previously in UK unlawfully and committed drug production offence and</p>	<p>Final sentence 18 months GP Reduction 1/4</p> <p><b>Sentence before reduction 24mths</b></p>	A1

deported. Likely coming back for further offending.		
Mustafa Mustafa Unlawful channel crossing in small boat. Was seen piloting the vessel.	Final sentence 32 weeks GP Reduction 1/4  <b>Sentence before reduction 10mths</b>	A1 Though in this instance the judge acknowledges that the offender piloting the vessel but says he wont treat it as an aggravating feature as he could have been charged under s25 so Judge was placing him either as B1 or C1
Omer Abdulla Attempt to unlawfully enter UK in small overcrowded boat. You have no criminal, or known criminal, past, and of course you claim to have been fleeing persecution in your own country. You have made an asylum claim which is yet to be adjudicated upon.	Final sentence 8 months GP Reduction 1/3  <b>Sentence before reduction 12mths</b>	B1
Fejzi Kalemi Attempt to unlawfully enter UK in small overcrowded boat. Offender pilotted the boat for about 90 minutes (he said everyone took turns).  You found yourself in debt from unregulated lenders, and that you did so because of the need to fund medical treatment for family members, and that you came to this country to seek a better life, to pay off that debt and to provide for your family.	Final sentence 8 months GP Reduction 1/4  <b>Sentence before reduction 12mths</b>  [Reduces from 12month to 9 months for GP then takes off a further month for the personal mitigation.]	A1  Unclear if the Judge did or did not take into account that the offender piloted the boat.
Abedullah Khamis Unlawful crossing of the Channel in a small boat. No previous unlawful attempts to enter.  I am told of some of your personal circumstances, you left Egypt in May, travelling through Libya, paying some €1400 to make the crossing from France, to which you had travelled, as a result of your	Final sentence 6 months GP Reduction 1/3  <b>Sentence before reduction 9mths</b>	C1 or C2

<p>difficult family circumstances, and in order to obtain a better life. I'm told that you have applied for asylum.</p>		
<p>Adel Kadir          You decided to return to the UK from Doha (having served a 29 months sentence for identity fraud and then being deported) because your father was involved in the repressive regime of Saddam Hussein and that had implications for you. On arrival, or by the time you arrived, you had lost whatever identity document you may have had in Doha to get on the plane. I say lost; I mean deliberately did not have it on your person. You approached border guards and gave false details, a false account, and claimed political asylum. You did not mention your deportation, no doubt for good reason, because you knew, in my judgement, you should not be in the UK. That is why you gave a false identity.          Previous unlawful attempts to enter country</p>	<p>Final sentence 10 months          GP Reduction 1/5   <b>Sentence before reduction          12.5mths</b></p>	<p>A3</p>

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