

AN INTERNATIONAL PERSPECTIVE ON SENTENCING

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SENTENCING GUIDELINES IN ENGLAND AND WALES

SUPPLEMENTARY MATERIAL

**NATIONAL ASSOCIATION OF SENTENCING COMMISSIONS
AUGUST 2009**

E. Sentencing ranges and starting points

1. Typically, a guideline will apply to an offence that can be committed in a variety of circumstances with different levels of seriousness. It will apply to a first time offender who has been convicted after a trial. Within the guidelines, a first time offender is a person who does not have a conviction which, by virtue of section 143(2) of the Criminal Justice Act 2003, must be treated as an aggravating factor.
2. As an aid to consistency of approach, the guidelines describe a number of types of activity which would fall within the broad definition of the offence. These are set out in a column headed "type/nature of activity".
3. The expected approach is for a court to identify the description that most nearly matches the particular facts of the offence for which sentence is being imposed. This will identify a **starting point** from which the sentencer can depart to reflect aggravating or mitigating factors affecting the seriousness of the offence (beyond those contained within the column describing the type or nature of offence activity) to reach a **provisional sentence**.
4. The **sentencing range** is the bracket into which the provisional sentence will normally fall after having regard to factors which aggravate or mitigate the seriousness of the offence. The particular circumstances may, however, make it appropriate that the provisional sentence falls outside the range.
5. Where the offender has previous convictions which aggravate the seriousness of the current offence, that may take the provisional sentence beyond the range given particularly where there are significant other aggravating factors present.
6. Once the **provisional sentence** has been identified by reference to those factors affecting the seriousness of the offence, the court will take into account any relevant factors of personal mitigation, which may take the sentence beyond the range given.
7. Where there has been a guilty plea, any reduction attributable to that plea will be applied to the sentence at this stage. This reduction may take the sentence below the **range** provided.
8. A court must give its reasons for imposing a sentence of a different kind or outside the range provided in the guidelines.

The Decision Making Process

The process set out below is intended to show that the sentencing approach for assault and other offences against the person is fluid and requires the structured exercise of discretion.

1. Identify Dangerous Offenders

Many assault offences are specified offences for the purposes of the public protection provisions in the 2003 Act. The court must determine whether there is a significant risk of serious harm by the commission of a further specified offence. The starting points in the guidelines are a) for offenders who do not meet the dangerous offender criteria and b) as the basis for the setting of a minimum term within an indeterminate sentence for those who do meet the criteria.

2. Identify the appropriate starting point

Because many acts can be charged as more than one offence, consideration will have to be given to the appropriate guideline once findings of fact have been made. The sentence should reflect the facts found to exist and not just the title of the offence of which the offender is convicted.

3. Consider relevant aggravating factors, both general and those specific to the type of offence

This may result in a sentence level being identified that is higher than the suggested starting point, sometimes substantially so.

4. Consider mitigating factors and personal mitigation

There may be general or offence specific mitigating factors and matters of personal mitigation which could result in a sentence that is **lower** than the suggested starting point (possibly substantially so), below the range provided, or a sentence of a different type.

5. Reduction for guilty plea

The court will then apply any reduction for a guilty plea following the approach set out in the Council's Guideline "Reduction in Sentence for a Guilty Plea" (revised July 2007).

6. Consider ancillary orders

The court should consider whether ancillary orders are appropriate or necessary.

7. The totality principle

The court should review the total sentence to ensure that it is proportionate to the offending behaviour and properly balanced.

8. Reasons

When a court imposes a sentence of a different type or outside the range provided, it should explain its reasons for doing so.

Offence guideline

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

Factors to take into consideration:

1. Causing GBH or wounding with intent is a serious offence for the purposes of section 224 of the Criminal Justice Act 2003 and sentencers should consider whether a sentence for public protection should be imposed. **The following guidelines apply to offenders who have not been assessed as dangerous.**
2. The suggested starting points and sentencing ranges in the guideline are based upon a first-time adult offender convicted after a trial (see page 10 above).
3. As conviction for a section 18 offence requires proof of an intention to cause grievous bodily harm, the level of culpability is high. A significant custodial sentence should be expected.
4. If an offender was acting in self-defence originally but then went on to use an unreasonable degree of force this might mitigate sentence. However, because of the requirement to prove intention, the offence will still be at the higher end of the seriousness scale. Depending on the degree of harm caused, a lengthy custodial sentence would normally be justified.
5. Only additional aggravating and mitigating factors specifically relevant to this offence are included in the guideline. When assessing the seriousness of any offence, the courts must always refer to the full list of aggravating and mitigating factors in the Council guideline on Seriousness.²³

²³ *Overarching Principles: Seriousness*, published 16 December 2004, www.sentencing-guidelines.gov.uk

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

Offences Against the Person Act 1861 (section 18)

THIS IS A SERIOUS OFFENCE FOR THE PURPOSES OF SECTIONS 225 AND 227 CRIMINAL JUSTICE ACT 2003.

Maximum penalty: Life imprisonment.

Type/nature of activity	Starting point	Sentencing range
Victim suffered life-threatening injury or particularly grave injury from a pre-meditated wounding or GBH involving the use of a weapon acquired prior to the offence and carried to the scene with specific intent to injure the victim	13 years custody	10 – 16 years custody
Victim suffered life-threatening injury or particularly grave injury (where the offence was not pre-meditated) OR Pre-meditated wounding or GBH involving the use of a weapon acquired prior to the offence and carried to the scene with specific intent to injure the victim (but not resulting in a life threatening injury or particularly grave injury)	8 years custody	7 – 10 years custody
Victim suffered a very serious injury or permanent disfigurement OR Pre-meditated wounding or GBH OR Other wounding or GBH involving the use of a weapon that came to hand at the scene	5 years custody	4 – 6 years custody
Other wounding or GBH	4 years custody	3 – 5 years custody
Additional aggravating factors	Additional mitigating factors –	
	provocation	

Causing death by dangerous driving

Factors to take into consideration

1. The following guideline applies to a “*first-time offender*” aged 18 or over convicted after trial (see page 8 above), who has **not** been assessed as a dangerous offender requiring a sentence under ss. 224-228 Criminal Justice Act 2003 (as amended).

2. When assessing the seriousness of any offence, the court must always refer to the full list of aggravating and mitigating factors in the Council guideline on Seriousness¹ as well as those set out in the adjacent table as being particularly relevant to this type of offending behaviour.

3. Levels of seriousness

The 3 levels are distinguished by factors related predominantly to the standard of driving; the general description of the degree of risk is complemented by examples of the type of bad driving arising. The presence of aggravating factors or combinations of a small number of determinants of seriousness will increase the starting point within the range. Where there is a larger group of determinants of seriousness and/or aggravating factors, this may justify moving the starting point to the next level.

Level 1 – The most serious offences encompassing driving that involved a deliberate decision to ignore (or a flagrant disregard for) the rules of the road and an apparent disregard for the great danger being caused to others. Such offences are likely to be characterised by:

- A prolonged, persistent and deliberate course of very bad driving **AND/OR**
- Consumption of substantial amounts of alcohol or drugs leading to gross impairment **AND/OR**
- A group of determinants of seriousness which in isolation or smaller number would place the offence in level 2

Level 1 is that for which the increase in maximum penalty was aimed primarily. Where an offence involves both of the determinants of seriousness identified, particularly if accompanied by aggravating factors such as multiple deaths or injuries, or a very bad driving record, this may move an offence towards the top of the sentencing range.

Level 2 – This is driving that created a *substantial* risk of danger and is likely to be characterised by:

- Greatly excessive speed, racing or competitive driving against another driver **OR**
- Gross avoidable distraction such as reading or composing text messages over a period of time **OR**
- Driving whilst ability to drive is impaired as a result of consumption of alcohol or drugs, failing to take prescribed medication or as a result of a known medical condition **OR**
- A group of determinants of seriousness which in isolation or smaller number would place the offence in level 3

Level 3 – This is driving that created a *significant* risk of danger and is likely to be characterised by:

- Driving above the speed limit/at a speed that is inappropriate for the prevailing conditions **OR**
- Driving when knowingly deprived of adequate sleep or rest or knowing that the vehicle has a dangerous defect or is poorly maintained or is dangerously loaded **OR**
- A brief but obvious danger arising from a seriously dangerous manoeuvre **OR**
- Driving whilst avoidably distracted **OR**
- Failing to have proper regard to vulnerable road users

The starting point and range overlap with Level 2 is to allow the breadth of discretion necessary to accommodate circumstances where there are significant aggravating factors.

4. Sentencers should take into account relevant matters of personal mitigation; see in particular guidance on good driving record, giving assistance at the scene and remorse in paragraphs 26-29 above.

¹ *Overarching Principles: Seriousness*, published 16 December 2004, www.sentencing-guidelines.gov.uk
Sentencing Guidelines Secretariat

Causing death by dangerous driving

Road Traffic Act 1988 (section 1)

THIS IS A SERIOUS OFFENCE FOR THE PURPOSES OF SECTION 224 CRIMINAL JUSTICE ACT 2003

**Maximum penalty: 14 years imprisonment
minimum disqualification of 2 years with compulsory extended re-test**

Nature of offence	Starting point	Sentencing range
<p>Level 1 The most serious offences encompassing driving that involved a deliberate decision to ignore (or a flagrant disregard for) the rules of the road and an apparent disregard for the great danger being caused to others</p>	8 years custody	7–14 years custody
<p>Level 2 Driving that created a <i>substantial</i> risk of danger</p>	5 years custody	4–7 years custody
<p>Level 3 Driving that created a <i>significant</i> risk of danger</p> <p><i>[Where the driving is markedly less culpable than for this level, reference should be made to the starting point and range for the most serious level of causing death by careless driving]</i></p>	3 years custody	2–5 years custody

Additional aggravating factors	Additional mitigating factors
<ol style="list-style-type: none"> 1. Previous convictions for motoring offences, particularly offences that involve bad driving or the consumption of excessive alcohol or drugs before driving 2. More than one person killed as a result of the offence 3. Serious injury to one or more victims, in addition to the death(s) 4. Disregard of warnings 5. Other offences committed at the same time, such as driving other than in accordance with the terms of a valid licence; driving while disqualified; driving without insurance; taking a vehicle without consent; driving a stolen vehicle 6. The offender's irresponsible behaviour such as failing to stop, falsely claiming that one of the victims was responsible for the collision, or trying to throw the victim off the car by swerving in order to escape 7. Driving off in an attempt to avoid detection or apprehension 	<ol style="list-style-type: none"> 1. Alcohol or drugs consumed unwittingly 2. Offender was seriously injured in the collision 3. The victim was a close friend or relative 4. Actions of the victim or a third party contributed significantly to the likelihood of a collision occurring and/or death resulting 5. The offender's lack of driving experience contributed to the commission of the offence 6. The driving was in response to a proven and genuine emergency falling short of a defence

Theft from a shop

Factors to take into consideration

1. The following starting points and sentencing ranges are for a first time offender aged 18 or over who pleaded not guilty. They should be applied as set out on pages 8-9 above.
2. The circumstances of this offence can vary significantly. At the least serious end of the scale are thefts involving low value goods, no (or little) planning and no violence or damage; a non-custodial sentence will usually be appropriate for a first time offender. At the higher end of the spectrum are thefts involving organised gangs or groups or the threat or use of force and a custodial starting point will usually be appropriate.
3. When assessing the level of harm, the circumstances of the retailer are a proper consideration; a greater level of harm may be caused where the theft is against a small retailer.
4. Retailers may suffer additional loss as a result of this type of offending such as the cost of preventative security measures, higher insurance premiums and time spent by staff dealing with the prosecution of offenders. However, the seriousness of an individual case must be judged on its own dimension of harm and culpability and the sentence on an individual offender should not be increased to reflect the harm caused to retailers in general by the totality of this type of offending.
5. In accordance with section 143(2) of the Criminal Justice Act 2003, any recent previous convictions for theft and dishonesty offences will need to be taken into account in sentencing. Where an offender demonstrates a level of 'persistent' or 'seriously persistent' offending, the community and custody thresholds may be crossed even though the other characteristics of the offence would otherwise warrant a lesser sentence.
6. When assessing the seriousness of an offence, a court must always have regard to the full list of aggravating and mitigating factors in the Council guideline *Overarching Principles: Seriousness* (reproduced in [Annex A](#)).
7. The Council guideline on Seriousness identifies high value as an aggravating factor in property offences. In cases of theft from a shop, theft of high value goods may be associated with other aggravating factors such as the degree of planning, professionalism and/or operating in a group, and care will need to be taken to avoid double counting. Deliberately targeting high value goods will always make an offence more serious.
8. Additional aggravating factors particularly relevant to this type of theft include:

(i) Involving a child

Where a child accompanies an offender during the offence, it will be an aggravating factor if the child is involved in, or is likely to be aware of, the theft or could be influenced or distressed by it. However, the mere presence of a child does not make the offence more serious.

(ii) Offender subject to a banning order

The fact that an offender is subject to a banning order that includes the store in which the offence is committed is an aggravating factor. Breach of any type of order (for example a civil banning order or a shop imposed ban) will aggravate to the same degree. However, where an offender is being sentenced also for breach, care must be taken to ensure that there is no double counting.

(iii) Intimidation, threat or use of force and additional damage to property

Generally, where theft from a shop is accompanied by force or the threat of force, it will be appropriate to charge the offender with the more serious offence of robbery. However, there may be some cases involving force which are charged as theft from a shop. In such cases, an offender can be sentenced only for the offence of which he or she is convicted and the court is bound by the maximum penalty for that offence. At the same time, the court must have regard to all the circumstances of the case when determining the appropriate sentence. This may result in sentencers concluding that the offending was aggravated by the use or threat of force and that a more severe sentence is warranted.

Any additional damage to property (for example caused when an offender is tackled or detained) also aggravates the seriousness of the offence.

Theft from a shop

Theft Act 1968 (section 1)

Maximum penalty: 7 years imprisonment

Type/nature of activity	Starting point	Sentencing range
Organised gang/group and Intimidation or the use or threat of force (short of robbery)	12 months custody	36 weeks-4 years custody
Significant intimidation or threats or Use of force resulting in slight injury or Very high level of planning or Significant related damage	6 weeks custody	Community order (HIGH)-36 weeks custody
Low level intimidation or threats or Some planning e.g. a session of stealing on the same day or going equipped or Some related damage	Community order (LOW)	Fine-Community order (MEDIUM)
Little or no planning or sophistication and Goods stolen of low value	Fine	Conditional discharge-Community order (LOW)

Additional aggravating factors:

1. Child accompanying offender is involved in or aware of theft
2. Offender is subject to a banning order that includes the store targeted
3. Offender motivated by intention to cause harm or out of revenge
4. Professional offending
5. Victim particularly vulnerable (e.g. small independent shop)
6. Offender targeted high value goods

Theft – shop – factors to take into consideration

This guideline and accompanying notes are taken from the Sentencing Guidelines Council's definitive guideline *Theft and Burglary in a building other than a dwelling*, published 9 December 2008

Key factors

- (a) The circumstances of this offence can vary significantly. At the least serious end of the scale are thefts involving low value goods, no (or little) planning and no violence or damage; a non-custodial sentence will usually be appropriate for a first time offender. At the higher end of the spectrum are thefts involving organised gangs or groups or the threat or use of force and a custodial starting point will usually be appropriate.
- (b) The starting points and sentencing ranges in this guideline are based on the assumption that the offender was motivated by greed or a desire to live beyond his or her means. To avoid double counting, such a motivation should not be treated as a factor that increases culpability.
- (c) When assessing the level of harm, the circumstances of the retailer are a proper consideration; a greater level of harm may be caused where the theft is against a small retailer.
- (d) Retailers may suffer additional loss as a result of this type of offending such as the cost of preventative security measures, higher insurance premiums and time spent by staff dealing with the prosecution of offenders. However, the seriousness of an individual case must be judged on its own dimension of harm and culpability and the sentence on an individual offender should not be increased to reflect the harm caused to retailers in general by the totality of this type of offending.
- (e) Any recent previous convictions for theft and dishonesty offences will need to be taken into account in sentencing. Where an offender demonstrates a level of 'persistent' or 'seriously persistent' offending, the community and custody thresholds may be crossed even though the other characteristics of the offence would otherwise warrant a lesser sentence.
- (f) The list of aggravating and mitigating factors on the pullout card identifies high value as an aggravating factor in property offences. In cases of theft from a shop, theft of high value goods may be associated with other aggravating factors such as the degree of planning, professionalism and/or operating in a group, and care will need to be taken to avoid double counting. Deliberately targeting high value goods will always make an offence more serious.
- (g) The Council has identified the following matters of offender mitigation which may be relevant to this offence:
 - (i) *Return of stolen property*
Whether and the degree to which the return of stolen property constitutes a matter of offender mitigation will depend on an assessment of the circumstances and, in particular, the voluntariness and timeliness of the return.
 - (ii) *Impact on sentence of offender's dependency*
Where an offence is motivated by an addiction (often to drugs, alcohol or gambling) this does not mitigate the seriousness of the offence, but a dependency may properly influence the type of sentence imposed. In particular, it may sometimes be appropriate to impose a drug rehabilitation requirement, an alcohol treatment requirement (for dependent drinkers) or an activity or supervision requirement including alcohol specific information, advice and support (for harmful and hazardous drinkers) as part of a community order or a suspended sentence order in an attempt to break the cycle of addiction and offending, even if an immediate custodial sentence would otherwise be warranted.
 - (iii) *Offender motivated by desperation or need*
The fact that an offence has been committed in desperation or need arising from particular hardship may count as offender mitigation in **exceptional circumstances**.

Triable either way:

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: 7 years

Offence seriousness (culpability and harm)

A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Little or no planning or sophistication and Goods stolen of low value	Band B fine	Conditional discharge to low level community order
Low level intimidation or threats or Some planning e.g. a session of stealing on the same day or going equipped or Some related damage	Low level community order	Band B fine to medium level community order
Significant intimidation or threats or Use of force resulting in slight injury or Very high level of planning or Significant related damage	6 weeks custody	High level community order to Crown Court
Organised gang/group and Intimidation or the use or threat of force (short of robbery)	Crown Court	Crown Court

Offence seriousness (culpability and harm)

B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

<p>Factor indicating higher culpability</p> <ol style="list-style-type: none"> Child accompanying offender is involved or aware of theft Offender is subject to a banning order that includes the store targeted Offender motivated by intention to cause harm or out of revenge Professional offending <p>Factors indicating greater degree of harm</p> <ol style="list-style-type: none"> Victim particularly vulnerable (e.g. small independent shop) Offender targeted high value goods 	
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Form a preliminary view of the appropriate sentence, then consider offender mitigation

Common factors are identified in the pullout card – see also note (g) opposite

Consider a reduction for a guilty plea

Consider ancillary orders, including compensation

Refer to pages 168-174 for guidance on available ancillary orders

**Decide sentence
Give reasons**

Bladed article/offensive weapon, possession of – factors to take into consideration

These guidelines and accompanying notes are drawn from the Court of Appeal's decision in *R v Cellaire and Poulton* [2003] 1 Cr App R (S) 116

Key factors

- (a) Concurrent sentences may be appropriate if the weapons offence is ancillary to a more serious offence; consecutive sentences may be appropriate if the offences are distinct and independent. **Refer to page 147 and consult your legal adviser for guidance.**
- (b) When assessing offence seriousness, consider the offender's intention, the circumstances of the offence and the nature of the weapon involved.
- (c) Some weapons are inherently more dangerous than others but the nature of the weapon is not the primary determinant of offence seriousness. A relatively less dangerous weapon, such as a billiard cue or knuckle-duster, may be used to create fear and such an offence may be at least as serious as one in which a more obviously dangerous weapon, such as a knife or an acid spray, is being carried for self-defence or no actual attempt has been made by the offender to use it.
- (d) Nevertheless, the fact that the offender was carrying a weapon which is offensive per se may shed light on his or her intentions.

<p>Criminal Justice Act 1988, s.139 (bladed article)</p> <p>Prevention of Crime Act 1953, s.1 (offensive weapon)</p>	<p>Bladed article/offensive weapon, possession of</p>
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Triable either way:
Maximum when tried summarily: Level 5 fine and/or 6 months
Maximum when tried on indictment: 4 years

<p>Offence seriousness (culpability and harm) A. Identify the appropriate starting point Starting points based on first time offender pleading not guilty</p>		
Examples of nature of activity	Starting point	Range
Weapon not used to threaten or cause fear	High level community order	Band C fine to 12 weeks custody
Weapon not used to threaten or cause fear but offence committed in dangerous circumstances	6 weeks custody	High level community order to Crown Court
Weapon used to threaten or cause fear and offence committed in dangerous circumstances	Crown Court	Crown Court

<p>Offence seriousness (culpability and harm) B. Consider the effect of aggravating and mitigating factors (other than those within examples above) Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but these lists are not exhaustive</p>	
<p>Factors indicating higher culpability</p> <ol style="list-style-type: none"> 1. Particularly dangerous weapon 2. Specifically planned use of weapon to commit violence, threaten violence or intimidate 3. Offence motivated by hostility towards minority individual or group 4. Offender under influence of drink or drugs 5. Offender operating in group or gang <p>Factors indicating greater degree of harm</p> <ol style="list-style-type: none"> 1. Offence committed at school, hospital or other place where vulnerable persons may be present 2. Offence committed on premises where people carrying out public services 3. Offence committed on or outside licensed premises 4. Offence committed on public transport 5. Offence committed at large public gathering, especially where there may be risk of disorder 	<p>Factors indicating lower culpability</p> <ol style="list-style-type: none"> 1. Weapon carried only on temporary basis 2. Original possession legitimate e.g. in course of trade or business

Form a preliminary view of the appropriate sentence, then consider offender mitigation
Common factors are identified in the pullout card

Consider a reduction for a guilty plea

Consider ancillary orders, including compensation
Refer to pages 168-174 for guidance on available ancillary orders
Consider deprivation of property (including weapon)

Decide sentence
Give reasons

Excess alcohol (drive/attempt to drive)

Road Traffic Act 1988, s.5(1)(a)

Triable only summarily:

Maximum: Level 5 fine and/or 6 months

- Must endorse and disqualify for at least 12 months
- Must disqualify for **at least 2 years** if offender has had two or more disqualifications for periods of 56 days or more in preceding 3 years – **refer to page 184 and consult your legal adviser for further guidance**
- Must disqualify for **at least 3 years** if offender has been convicted of a relevant offence in preceding 10 years – **refer to page 184 and consult your legal adviser for further guidance**

If there is a delay in sentencing after conviction, consider interim disqualification

Note: the final column below provides guidance regarding the length of disqualification that may be appropriate in cases to which the 3 year minimum applies. The period to be imposed in any individual case will depend on an assessment of all the relevant circumstances, including the length of time since the earlier ban was imposed and the gravity of the current offence.

Offence seriousness (culpability and harm) A. Identify the appropriate starting point Starting points based on first time offender pleading not guilty						
Level of alcohol			Starting point	Range	Disqualification	Disqual. 2nd offence in 10 years – see note above
Breath (mg)	Blood (ml)	Urine (ml)				
36 – 59	81 – 137	108 – 183	Band C fine	Band C fine	12 – 16 months	36 – 40 months
60 – 89	138 – 206	184 – 274	Band C fine	Band C fine	17 – 22 months	36 – 46 months
90 – 119	207 – 275	275 – 366	Medium level community order	Low level community order to high level community order	23 – 28 months	36 – 52 months
120 – 150 and above	276 – 345 and above	367 – 459 and above	12 weeks custody	High level community order to 26 weeks custody	29 – 36 months	36 – 60 months

Offence seriousness (culpability and harm) B. Consider the effect of aggravating and mitigating factors (other than those within examples above) Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but these lists are not exhaustive	
<p>Factors indicating higher culpability</p> <ol style="list-style-type: none"> 1. LGV, HGV, PSV etc. 2. Poor road or weather conditions 3. Carrying passengers 4. Driving for hire or reward 5. Evidence of unacceptable standard of driving <p>Factors indicating greater degree of harm</p> <ol style="list-style-type: none"> 1. Involved in accident 2. Location e.g. near school 3. High level of traffic or pedestrians in the vicinity 	<p>Factors indicating lower culpability</p> <ol style="list-style-type: none"> 1. Genuine emergency established * 2. Spiked drinks * 3. Very short distance driven * <p>* even where not amounting to special reasons</p>

Road Traffic Regulation Act 1984, s.89(10)	Speeding
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Triable only summarily:

Maximum: Level 3 fine (level 4 if motorway)

Must endorse and may disqualify. If no disqualification, impose 3-6 points

Offence seriousness (culpability and harm)			
A. Identify the appropriate starting point			
Starting points based on first time offender pleading not guilty			
Speed limit (mph)	Recorded speed (mph)		
20	21 – 30	31 – 40	41 – 50
30	31 – 40	41 – 50	51 – 60
40	41 – 55	56 – 65	66 – 75
50	51 – 65	66 – 75	76 – 85
60	61 – 80	81 – 90	91 – 100
70	71 – 90	91 – 100	101 – 110
Starting point	Band A fine	Band B fine	Band B fine
Range	Band A fine	Band B fine	Band B fine
Points/disqualification	3 points	4 – 6 points OR Disqualify 7 – 28 days	Disqualify 7 – 56 days OR 6 points

Offence seriousness (culpability and harm)	
B. Consider the effect of aggravating and mitigating factors (other than those within examples above)	
Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but these lists are not exhaustive	
Factors indicating higher culpability 1. Poor road or weather conditions 2. LGV, HGV, PSV etc. 3. Towing caravan/trailer 4. Carrying passengers or heavy load 5. Driving for hire or reward 6. Evidence of unacceptable standard of driving over and above speed Factors indicating greater degree of harm 1. Location e.g. near school 2. High level of traffic or pedestrians in the vicinity	Factor indicating lower culpability 1. Genuine emergency established

Form a preliminary view of the appropriate sentence, then consider offender mitigation
Common factors are identified in the pullout card

Consider a reduction for guilty plea

Consider ancillary orders
Refer to pages 168-174 for guidance on available ancillary orders

Decide sentence
Give reasons

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Explanatory Material

Meaning of 'range', 'starting point' and 'first time offender'

As in previous editions, and consistent with other Sentencing Guidelines Council guidelines, these guidelines are for a **first time offender** convicted after a trial. They provide a **starting point** based on an assessment of the seriousness of the offence and a **range** within which the sentence will normally fall in most cases.

A clear, consistent understanding of each of these terms is essential and the Council and the Sentencing Advisory Panel have agreed the meanings set out in paragraphs 1(a)-(d) below.

They are explained in a format that follows the structured approach to the sentencing decision which identifies first those aspects that affect the assessment of the seriousness of the offence, then those aspects that form part of personal mitigation and, finally, any reduction for a guilty plea.

In practice, the boundaries between these stages will not always be as clear cut but the underlying principles will remain the same.

In accordance with section 174 of the Criminal Justice Act 2003, a court is obliged to '*state in open court, in ordinary language and in general terms, its reasons for deciding on the sentence passed*'.

In particular, '*where guidelines indicate that a sentence of a particular kind, or within a particular range, would normally be appropriate and the sentence is of a different kind, or is outside that range*' the court must give its reasons for imposing a sentence of a different kind or outside the range.

Assessing the seriousness of the offence

1. a) These guidelines apply to an offence that can be committed in a variety of circumstances with different levels of seriousness. They apply to a **first time offender** who has been convicted after a trial.² Within the guidelines, a **first time offender** is a person who does not have a conviction which, by virtue of section 143(2) of the Criminal Justice Act 2003, must be treated as an aggravating factor.
 - b) As an aid to consistency of approach, a guideline will describe a number of types of activity falling within the broad definition of the offence. These are set out in a column headed 'examples of nature of activity'.
 - c) The expected approach is for a court to identify the description that most nearly matches the particular facts of the offence for which sentence is being imposed. This will identify a **starting point** from which the sentencer can depart to reflect aggravating or mitigating factors affecting the seriousness of the *offence* (beyond those contained in the description itself) to reach a **provisional sentence**.
 - d) The range is the bracket into which the **provisional sentence** will normally fall after having regard to factors which aggravate or mitigate the seriousness of the offence. The particular circumstances may, however, make it appropriate that the **provisional sentence** falls outside the **range**.
2. Where the offender has previous convictions which aggravate the seriousness of the current offence, that may take the **provisional sentence** beyond the **range** given particularly where there are significant other aggravating factors present.

² This means any case in which there is no guilty plea including, e.g., where an offender is convicted in absence after evidence has been heard

Offender Mitigation

3. Once the **provisional sentence** has been identified (by reference to the factors affecting the seriousness of the **offence**), the court will take into account any relevant factors of **offender** mitigation. Again, this may take the provisional sentence outside the range.

Reduction for guilty plea

4. Where there has been a guilty plea, any reduction attributable to that plea will be applied to the sentence at this stage. This reduction may take the sentence below the **range** provided.

Fine band starting points and ranges

In these guidelines, where the starting point or range for an offence is or includes a fine, it is expressed as one of three fine bands (A, B or C). As detailed on page 148 below, each fine band has both a starting point and a range.

On some offence guidelines, both the starting point and the range are expressed as a single fine band; see for example careless driving on page 117 where the starting point and range for the first level of offence activity are 'band A fine'. This means that the starting point will be the starting point for fine band A (50% of the offender's relevant weekly income) and the range will be the range for fine band A (25-75% of relevant weekly income). On other guidelines, the range encompasses more than one fine band; see for example drunk and disorderly in a public place on page 55 where the starting point for the second level of offence activity is 'band B fine' and the range is 'band A fine to band C fine'. This means that the starting point will be the starting point for fine band B (100% of relevant weekly income) and the range will be the lowest point of the range for fine band A to the highest point of the range for fine band C (25%-175% of relevant weekly income).

Sentencing for multiple offences

The starting points and ranges indicated in the individual offence guidelines assume that the offender is being sentenced for a single offence. Where an offender is being sentenced for multiple offences, the overall sentence must be just and appropriate having regard to the totality of the offending; the court should not simply aggregate the sentences considered suitable for the individual offences. The court's assessment of the totality of the offending may result in an overall sentence above the range indicated for the individual offences, including a sentence of a different type.³

While concurrent sentences are generally to be preferred where the offences arose out of a single incident, consecutive sentences may be desirable in some circumstances. **Consult your legal adviser for further guidance.**

Offences not included in the guidelines

A number of offences are currently under consideration by the Council and will be included in the MCSG by way of an update when agreed. In the interim, the relevant guideline from the previous version of the MCSG has been included for ease of reference – **these do not constitute formal guidelines issued by the Council.**

Where there is no guideline for an offence, it may assist in determining sentence to consider the starting points and ranges indicated for offences that are of a similar level of seriousness.

When sentencing for the breach of any order for which there is not a specific guideline, the primary objective will be to ensure compliance. Reference to existing guidelines in respect of breaches of orders may provide a helpful point of comparison (see in particular page 43 (breach of community order) and page 83 (breach of protective order)).

Consult your legal adviser for further guidance.

³ When considering whether the threshold for a community or custodial sentence is passed, ss.148(1) and 152(2) of the Criminal Justice Act 2003 confirm that the court may have regard to the combination of the offence and one or more offences associated with it

Approach to the assessment of fines

Introduction

1. The amount of a fine must reflect the **seriousness** of the offence.⁴
2. The court must also take into account the **financial circumstances** of the offender; this applies whether it has the effect of increasing or reducing the fine.⁵ Normally a fine should be of an amount that is capable of being paid within 12 months.
3. The aim is for the fine to have an equal impact on offenders with different financial circumstances; it should be a hardship but should not force the offender below a reasonable 'subsistence' level.
4. The guidance below aims to establish a clear, consistent and principled approach to the assessment of fines that will apply fairly in the majority of cases. However, it is impossible to anticipate every situation that may be encountered and in each case the court will need to exercise its judgment to ensure that the fine properly reflects the **seriousness of the offence** and takes into account the **financial circumstances** of the offender.

Fine bands

5. For the purpose of the offence guidelines, a fine is based on one of three bands (A, B or C).⁶ The selection of the relevant fine band, and the position of the individual offence within that band, is determined by the **seriousness** of the offence.

	Starting point	Range
Fine Band A	50% of relevant weekly income	25 – 75% of relevant weekly income
Fine Band B	100% of relevant weekly income	75 – 125% of relevant weekly income
Fine Band C	150% of relevant weekly income	125 – 175% of relevant weekly income

6. For an explanation of the meaning of starting point and range, both generally and in relation to fines, see pages 145-146.

Definition of relevant weekly income

7. The **seriousness** of an offence determines the choice of fine band and the position of the offence within the range for that band. The offender's **financial circumstances** are taken into account by expressing that position as a proportion of the offender's **relevant weekly income**.
8. Where an offender is in receipt of income from employment or is self-employed **and** that income is more than £100 per week after deduction of tax and national insurance (or equivalent where the offender is self-employed), the actual income is the **relevant weekly income**.
9. Where an offender's only source of income is state benefit (including where there is relatively low additional income as permitted by the benefit regulations) or the offender is in receipt of income from employment or is self-employed but the amount of income after deduction of tax and national insurance is £100 or less, the **relevant weekly income is deemed to be £100**. Additional information about the basis for this approach is set out on page 155.

⁴ Criminal Justice Act 2003, s.164(2)

⁵ *ibid.*, ss.164(1) and 164(4)

⁶ As detailed in paras.36-38 below, two further bands are provided which apply where the offence has passed the threshold for a community order (Band D) or a custodial sentence (Band E) but the court decides that it need not impose such a sentence and that a financial penalty is appropriate

10. In calculating relevant weekly income, no account should be taken of tax credits, housing benefit, child benefit or similar.

No reliable information

11. Where an offender has failed to provide information, or the court is not satisfied that it has been given sufficient reliable information, it is entitled to make such determination as it thinks fit regarding the financial circumstances of the offender.⁷ Any determination should be clearly stated on the court records for use in any subsequent variation or enforcement proceedings. In such cases, a record should also be made of the applicable fine band and the court's assessment of the position of the offence within that band based on the seriousness of the offence.

12. Where there is no information on which a determination can be made, the court should proceed on the basis of an **assumed relevant weekly income of £350**. This is derived from national median pre-tax earnings; a gross figure is used as, in the absence of financial information from the offender, it is not possible to calculate appropriate deductions.⁸

13. Where there is some information that tends to suggest a significantly lower or higher income than the recommended £350 default sum, the court should make a determination based on that information.

14. A court is empowered to remit a fine in whole or part if the offender subsequently provides information as to means.⁹ The assessment of offence seriousness and, therefore, the appropriate fine band and the position of the offence within that band is **not** affected by the provision of this information.

Assessment of financial circumstances

15. While the initial consideration for the assessment of a fine is the offender's relevant weekly income, the court is required to take account of the offender's **financial circumstances** more broadly. Guidance on important parts of this assessment is set out below.

16. An offender's financial circumstances may have the effect of increasing or reducing the amount of the fine; however, they are **not** relevant to the assessment of offence seriousness. They should be considered separately from the selection of the appropriate fine band and the court's assessment of the position of the offence within the range for that band.

Out of the ordinary expenses

17. In deciding the proportions of relevant weekly income that are the starting points and ranges for each fine band, account has been taken of reasonable living expenses. Accordingly, no further allowance should normally be made for these. In addition, no allowance should normally be made where the offender has dependants.

18. Outgoings will be relevant to the amount of the fine only where the expenditure is **out of the ordinary** and **substantially** reduces the ability to pay a financial penalty so that the requirement to pay a fine based on the standard approach would lead to **undue** hardship.

Unusually low outgoings

19. Where the offender's living expenses are substantially **lower** than would normally be expected, it may be appropriate to adjust the amount of the fine to reflect this. This may apply, for example, where an offender does not make any financial contribution towards his or her living costs.

⁷ Criminal Justice Act 2003, s.164(5)

⁸ For 2004-05, the median pre-tax income of all tax payers was £315 per week: HMRC Survey of Personal Incomes. This figure has been increased to take account of inflation

⁹ Criminal Justice Act 2003, s.165(2)

Savings

20. Where an offender has savings these will not normally be relevant to the assessment of the amount of a fine although they may influence the decision on time to pay.

21. However, where an offender has little or no income but has substantial savings, the court may consider it appropriate to adjust the amount of the fine to reflect this.

Household has more than one source of income

22. Where the household of which the offender is a part has more than one source of income, the fine should normally be based on the income of the offender alone.

23. However, where the offender's part of the income is very small (or the offender is wholly dependent on the income of another), the court may have regard to the extent of the household's income and assets which will be available to meet any fine imposed on the offender.¹⁰

Potential earning capacity

24. Where there is reason to believe that an offender's potential earning capacity is greater than his or her current income, the court may wish to adjust the amount of the fine to reflect this.¹¹ This may apply, for example, where an unemployed offender states an expectation to gain paid employment within a short time. The basis for the calculation of fine should be recorded in order to ensure that there is a clear record for use in variation or enforcement proceedings.

High income offenders

25. Where the offender is in receipt of very high income, a fine based on a proportion of relevant weekly income may be disproportionately high when compared with the seriousness of the offence. In such cases, the court should adjust the fine to an appropriate level; as a general indication, in most cases the fine for a first time offender pleading not guilty should not exceed 75% of the maximum fine.

Offence committed for 'commercial' purposes

26. Some offences are committed with the intention of gaining a significant commercial benefit. These often occur where, in order to carry out an activity lawfully, a person has to comply with certain processes which may be expensive. They include, for example, 'taxi-touting' (where unauthorised persons seek to operate as taxi drivers) and 'fly-tipping' (where the cost of lawful disposal is considerable).

27. In some of these cases, a fine based on the standard approach set out above may not reflect the level of financial gain achieved or sought through the offending. Accordingly:

- a. where the offender has generated income or avoided expenditure to a level that can be calculated or estimated, the court may wish to consider that amount when determining the financial penalty;
- b. where it is not possible to calculate or estimate that amount, the court may wish to draw on information from the enforcing authorities about the general costs of operating within the law.

Reduction for a guilty plea

28. Where a guilty plea has been entered, the amount of the fine should be reduced by the appropriate proportion. See page 17 of the user guide for guidance.

¹⁰ *R v Engen* [2004] EWCA Crim 1536 (CA)

¹¹ *R v Little* (unreported) 14 April 1976 (CA)

Other considerations

Maximum fines

29. A fine must not exceed the statutory limit. Where this is expressed in terms of a 'level', the maxima are:

Level 1	£200
Level 2	£500
Level 3	£1,000
Level 4	£2,500
Level 5	£5,000

Victims surcharge

30. Whenever a court imposes a fine in respect of an offence committed after 1 April 2007, it must order the offender to pay a surcharge of £15.¹²

31. Where the offender is of adequate means, the court must not reduce the fine to allow for imposition of the surcharge. Where the offender does not have sufficient means to pay the total financial penalty considered appropriate by the court, the order of priority is compensation, surcharge, fine, costs.

32. Further guidance is set out in *Guidance on Victims Surcharge* issued by the Justices' Clerks' Society and Magistrates' Association (30 March 2007).

Costs

33. See page 175 for guidance on the approach to costs. Where the offender does not have sufficient means to pay the total financial penalty considered appropriate by the court, the order of priority is compensation, surcharge, fine, costs.

Multiple offences

34. Where an offender is to be fined for two or more offences that arose out of the same incident, it will often be appropriate to impose on the most serious offence a fine which reflects the totality of the offending where this can be achieved within the maximum penalty for that offence. 'No separate penalty' should be imposed for the other offences.

35. Where compensation is being ordered, that will need to be attributed to the relevant offence as will any necessary ancillary orders.

Fine Bands D and E

36. Two further fine bands are provided to assist a court in calculating a fine where the offence and general circumstances would otherwise warrant a community order (band D) or a custodial sentence (band E) but the court has decided that it need not impose such a sentence and that a financial penalty is appropriate. See pages 160 and 163 for further guidance.

37. The following starting points and ranges apply:

	Starting point	Range
Fine Band D	250% of relevant weekly income	200 – 300% of relevant weekly income
Fine Band E	400% of relevant weekly income	300 – 500% of relevant weekly income

38. In cases where these fine bands apply, it may be appropriate for the fine to be of an amount that is larger than can be repaid within 12 months. See paragraph 43 below.

¹² Criminal Justice Act 2003, ss.161A and 161B
Sentencing Guidelines Secretariat

Imposition of fines with custodial sentences

39. A fine and a custodial sentence may be imposed for the same offence although there will be few circumstances in which this is appropriate, particularly where the custodial sentence is to be served immediately. One example might be where an offender has profited financially from an offence but there is no obvious victim to whom compensation can be awarded. Combining these sentences is most likely to be appropriate only where the custodial sentence is short and/or the offender clearly has, or will have, the means to pay.

40. Care must be taken to ensure that the overall sentence is proportionate to the seriousness of the offence and that better off offenders are not able to 'buy themselves out of custody'.

Consult your legal adviser in any case in which you are considering combining a fine with a custodial sentence.

Payment

41. A fine is payable in full on the day on which it is imposed. The offender should always be asked for immediate payment when present in court and some payment on the day should be required wherever possible.

42. Where that is not possible, the court may, in certain circumstances, require the offender to be detained. More commonly, a court will allow payments to be made over a period set by the court:

- a. if periodic payments are allowed, the fine should normally be payable within a maximum of 12 months. However, it may be unrealistic to expect those on very low incomes to maintain payments for as long as a year;
- b. compensation should normally be payable within 12 months. However, in exceptional circumstances it may be appropriate to allow it to be paid over a period of up to 3 years.

43. Where fine bands D and E apply (see paragraphs 36-38 above), it may be appropriate for the fine to be of an amount that is larger than can be repaid within 12 months. In such cases, the fine should normally be payable within a maximum of 18 months (band D) or 2 years (band E).

44. It is generally recognised that the maximum weekly payment by a person in receipt of state benefit should rarely exceed £5.

45. When allowing payment by instalments by an offender in receipt of earned income, the following approach may be useful. If the offender has dependants or larger than usual commitments, the weekly payment is likely to be decreased.

Net weekly income	Starting point for weekly payment
£60	£5
£120	£10
£200	£25
£250	£30
£300	£50
£400	£80

46. The payment terms must be included in any collection order made in respect of the amount imposed; see pages 156-157.

Assessment of fines: sentencing structure

1. Decide that a fine is appropriate

2. Offence seriousness A. Identify the appropriate fine band

- In the offence guidelines, the starting point for a fine is identified as fine band A, B or C
- Each fine band provides a starting point and a range related to the seriousness of the offence expressed as a proportion of the offender's relevant weekly income – see paragraph 5 on page 148

2. Offence seriousness B. Consider the effect of aggravating and mitigating factors

- Move up or down from the starting point to reflect aggravating or mitigating factors that affect the seriousness of the offence – this will usually be within the indicated range for the fine band but the court is not precluded from going outside the range where the facts justify it – see pages 145-146

3. Consider offender mitigation

- The court may consider it appropriate to make a further adjustment to the starting point in light of any matters of offender mitigation – see page 17 of the user guide

4. Form a view of the position of the offence within the range for the fine band then take into account the offender's financial circumstances

- Require the offender to provide a statement of financial circumstances. Obtain further information through questioning if necessary. Failure to provide the information when required is an offence
- The provision of financial information does not affect the seriousness of the offence or, therefore, the position of the offence within the range for the applicable fine band
- The initial consideration for the assessment of the fine is the offender's **relevant weekly income** – see paragraphs 7-10 on page 148
- However, the court must take account of the offender's financial circumstances more broadly. These may have the effect of increasing or reducing the amount of the fine – see paragraphs 15-25 on pages 149-150
- Where the court has insufficient information to make a proper determination of the offender's financial circumstances, it may make such determination as it thinks fit – see paragraphs 11-14 on page 149

5. Consider a reduction for a guilty plea

- Reduce the fine by the appropriate proportion – see page 17 of the user guide

6. Consider ancillary orders, including compensation

- Consider compensation in every case where the offending has resulted in personal injury, loss or damage – give reasons if order not made – see pages 165-167. Compensation takes priority over a fine where there are insufficient resources to pay both
- See pages 168-174 for guidance on available ancillary orders

7. Decide sentence Give reasons

- **The resulting fine must reflect the seriousness of the offence and must take into account the offender's financial circumstances**
- Consider the proposed total financial penalty, including compensation, victims surcharge and costs. Where there are insufficient resources to pay the total amount, the order of priority is compensation, surcharge, fine, costs
- Give reasons for the sentence passed, including any ancillary orders
- State if the sentence has been reduced to reflect a guilty plea; indicate what the sentence would otherwise have been
- Explain if the sentence is of a different kind or outside the range indicated in the guidelines
- Expect immediate payment. If payment by instalments allowed, the court must make a collection order unless this would be impracticable or inappropriate – see pages 156-157

Additional information: approach to offenders on low income

1. An offender whose primary source of income is state benefit will generally receive a base level of benefit (e.g. job seekers' allowance, a relevant disability benefit or income support) and may also be eligible for supplementary benefits depending on his or her individual circumstances (such as child tax credits, housing benefit, council tax benefit and similar).
2. If relevant weekly income were defined as the amount of benefit received, this would usually result in higher fines being imposed on offenders with a higher level of need; in most circumstances that would not properly balance the seriousness of the offence with the financial circumstances of the offender. While it might be possible to exclude from the calculation any allowance above the basic entitlement of a single person, that could be complicated and time consuming.
3. Similar issues can arise where an offender is in receipt of a low earned income since this may trigger eligibility for means related benefits such as working tax credits and housing benefit depending on the particular circumstances. It will not always be possible to determine with any confidence whether such a person's financial circumstances are significantly different from those of a person whose primary source of income is state benefit.
4. For these reasons, a simpler and fairer approach to cases involving offenders in receipt of low income (whether primarily earned or as a result of benefit) is to identify an amount that is deemed to represent the offender's relevant weekly income.
5. While a precise calculation is neither possible nor desirable, it is considered that an amount that is approximately half-way between the base rate for job seekers' allowance and the net weekly income of an adult earning the minimum wage for 30 hours per week represents a starting point that is both realistic and appropriate; **this is currently £100**.¹³ The calculation is based on a 30 hour working week in recognition of the fact that many of those on minimum wage do not work a full 37 hour week and that lower minimum wage rates apply to younger people.
6. It is expected that this figure will remain in use until 31 March 2011. Future revisions of the guideline will update the amount in accordance with current benefit and minimum wage levels.

¹³ With effect from 1 October 2007, the minimum wage is £5.52 per hour for an adult aged 22 or over. Based on a 30 hour week, this equates to approximately £149.14 after deductions for tax and national insurance. To ensure equivalence of approach, the level of job seekers' allowance for a single person aged 22 has been used for the purpose of calculating the mid point; this is currently £46.85

1. When sentencing an offence committed in a domestic context, refer to the Sentencing Guidelines Council's definitive guideline *Overarching Principles: Domestic Violence*, published

7 December 2006. The guideline emphasises that:

- as a starting point for sentence, offences committed in a domestic context should be regarded as no less serious than offences committed in a non-domestic context;
- many offences of violence in a domestic context are dealt with in a magistrates' court as an offence of common assault or assault occasioning actual bodily harm because the injuries sustained are relatively minor. Offences involving serious violence will warrant a custodial sentence in the majority of cases;
- a number of aggravating factors may commonly arise by virtue of the offence being committed in a domestic context (see list below);
- since domestic violence takes place within the context of a current or past relationship, the history of the relationship will often be relevant in assessing the gravity of the offence. A court is entitled to take into account anything occurring within the relationship as a whole, which may reveal relevant aggravating or mitigating factors;
- in respect of an offence of violence in a domestic context, an offender's good character in relation to conduct outside the home should generally be of no relevance where there is a proven pattern of behaviour;
- assertions that the offence has been provoked by conduct of the victim need to be treated with great care, both in determining whether they have a factual basis and in considering whether the circumstances of the alleged conduct amounts to provocation sufficient to mitigate the seriousness of the offence;
- where the custody threshold is only just crossed, so that if a custodial sentence is imposed it will be a short sentence, the court will wish to consider whether the better option is a suspended sentence order or a community order, including in either case a requirement to attend an accredited domestic violence programme. Such an option will only be appropriate where the court is satisfied that the offender genuinely intends to reform his or her behaviour and that there is a real prospect of rehabilitation being successful. Such a situation is unlikely to arise where there has been a pattern of abuse.

Refer to paragraphs 4.1 to 4.4 of the Council guideline for guidance regarding the relevance of the victim's wishes to sentence.

Aggravating factors

2. The following aggravating factors may be of particular relevance to offences committed in a domestic context and should be read alongside the general factors set out on the pullout card:

Factors indicating higher culpability

1. Abuse of trust and abuse of power
2. Using contact arrangements with a child to instigate an offence
3. Proven history of violence or threats by the offender in a domestic setting
4. History of disobedience to court orders

Factors indicating a greater degree of harm

1. Victim is particularly vulnerable
2. Impact on children

Racial or religious aggravation – statutory provisions

1. Sections 29 to 32 of the Crime and Disorder Act 1998 create specific racially or religiously aggravated offences, which have higher maximum penalties than the non-aggravated versions of those offences. The individual offence guidelines indicate whether there is a specifically aggravated form of the offence.

2. An offence is racially or religiously aggravated for the purposes of sections 29-32 of the Act if the offender demonstrates hostility towards the victim based on his or her membership (or presumed membership) of a racial or religious group, or if the offence is racially or religiously motivated.¹⁴

3. For all other offences, section 145 of the Criminal Justice Act 2003 provides that the court must regard racial or religious aggravation as an aggravating factor.

4. The court should not treat an offence as racially or religiously aggravated for the purposes of section 145 where a racially or religiously aggravated form of the offence was charged but resulted in an acquittal.¹⁵ The court should not normally treat an offence as racially or religiously aggravated if a racially or religiously aggravated form of the offence was available but was not charged.¹⁶ **Consult your legal adviser for further guidance in these situations.**

Aggravation related to disability or sexual orientation – statutory provisions

5. Under section 146 of the Criminal Justice Act 2003, the court must treat as an aggravating factor the fact that:

- an offender demonstrated hostility towards the victim based on his or her sexual orientation or disability (or presumed sexual orientation or disability); or
- the offence was motivated by hostility towards persons who are of a particular sexual orientation or who have a particular disability.

Approach to sentencing

6. A court should not conclude that offending involved aggravation related to race, religion, disability or sexual orientation without first putting the offender on notice and allowing him or her to challenge the allegation.

7. When sentencing any offence where such aggravation is found to be present, the following approach should be followed. **This applies both to the specific racially or religiously aggravated offences under the Crime and Disorder Act 1998 and to offences which are regarded as aggravated under section 145 or 146 of the Criminal Justice Act 2003:**¹⁷

- sentencers should first determine the appropriate sentence, leaving aside the element of aggravation related to race, religion, disability or sexual orientation but taking into account all other aggravating or mitigating factors;
- the sentence should then be increased to take account of the aggravation related to race, religion, disability or sexual orientation;
- the increase may mean that a more onerous penalty of the same type is appropriate, or that the threshold for a more severe type of sentence is passed;
- the sentencer must state in open court that the offence was aggravated by reason of race, religion, disability or sexual orientation;
- the sentencer should state what the sentence would have been without that element of aggravation.

¹⁴ Crime and Disorder Act 1998, s.28

¹⁵ Refer to *R v McGillivray* [2005] EWCA Crim 604 (CA)

¹⁶ Refer to *R v O'Callaghan* [2005] EWCA Crim 317 (CA)

¹⁷ Refer to *R v Kelly and Donnelly* [2001] EWCA Crim 170 in which the Court considered the approach to sentencing in cases involving racial or religious aggravation

8. The extent to which the sentence is increased will depend on the seriousness of the aggravation. The following factors could be taken as indicating a high level of aggravation:

Offender's intention

- The element of aggravation based on race, religion, disability or sexual orientation was planned
- The offence was part of a pattern of offending by the offender
- The offender was a member of, or was associated with, a group promoting hostility based on race, religion, disability or sexual orientation
- The incident was deliberately set up to be offensive or humiliating to the victim or to the group of which the victim is a member

Impact on the victim or others

- The offence was committed in the victim's home
- The victim was providing a service to the public
- The timing or location of the offence was calculated to maximise the harm or distress it caused
- The expressions of hostility were repeated or prolonged
- The offence caused fear and distress throughout a local community or more widely
- The offence caused particular distress to the victim and/or the victim's family.

9. At the lower end of the scale, the aggravation may be regarded as less serious if:

- It was limited in scope or duration
- The offence was not motivated by hostility on the basis of race, religion, disability or sexual orientation, and the element of hostility or abuse was minor or incidental

10. In these guidelines, the specific racially or religiously aggravated offences under the Crime and Disorder Act 1998 are addressed on the same page as the 'basic offence'; the starting points and ranges indicated on the guideline relate to the 'basic' (i.e. non-aggravated) offence. The increase for the element of racial or religious aggravation may result in a sentence above the range; **this will not constitute a departure from the guideline for which reasons must be given.**